

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2496 OF 2009

JUDGMENT:

The present appeal is preferred by respondent No.2 - M/s. New India Assurance Company Limited in M.V.O.P. No.1030 of 2006, on the file of the Chairman, Motor Accident Claims Tribunal - cum - District Judge), Khammam (for short 'the Tribunal'), under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), challenging the order and decree, dated 23-04-2008, whereby and where-under, a sum of Rs.2,04,397/- was granted as compensation as against the claim of Rs.7,00,000/- laid under Section 166 of the Act, on the main ground that the Tribunal has not assigned any reason as to granting Rs.1,00,000/- towards loss of amenities of life, and the Tribunal also omitted to take into consideration the amount of Rs.15,330/- reimbursed by the petitioner towards medical expenses and, therefore, sought to either modify or to set aside the order and decree.

2. Respondent No.2 and the appellant herein, who are owner and insurer of Bajaj CT 100 motorcycle bearing registration No.AP 20N 1377, are respondent Nos.1 and 2, respectively, while respondent No.1 is the petitioner in the aforesaid M.V.O.P.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid MVOP.

4. Heard Mrs. Kalpana Ekbote, learned standing counsel for the appellant - insurer. No representation for respondent No.1 - petitioner. Though, service was completed on respondent No.2 - owner of the vehicle, none appears, but, however, he suffered a decree having been *ex parte* before the Tribunal.

5. Perused the order and the evidence on record, both, oral and documentary.

6. The learned standing counsel fairly concedes that the petitioner has sustained as many as four fractures and, of course, certain other injuries to the face. The Tribunal in paragraph No.17 has not clearly indicated quantifying Rs.1,00,000/- towards each of the heads under 'special damages' and 'general damages', but a consolidated amount of Rs.1,00,000/- was granted towards loss of amenities of life, besides granting Rs.64,397/- towards medical expenses in view of the evidence of PW.2, the doctor examined by the petitioner.

7. It is true, as could be seen from the order, the Tribunal ought not to have assessed the amount in that manner, and ought to have taken 'special damages' and 'general damages' and worked out the amounts under each of the heads. Be that as it may, since the Tribunal has granted Rs.1,00,000/- towards loss of amenities of life which can be construed as inconvenience to which the petitioner is put on

account of four fractures including pain and suffering towards which, separately a sum of Rs.40,000/- was granted appears to be reasonable for the reason, that the Tribunal has not granted any further amount towards extra nourishment and the amount to which the petitioner is entitled for the leave he availed, attendant charges and transport charges. Therefore, keeping in view, the nature of injuries he sustained and the sufferance to which he was put, though no partial permanent disability is occurring, still, the amount of Rs.2,04,397/- awarded by the Tribunal appears to be reasonable, just and adequate under such circumstances.

8. The learned standing counsel for the appellant would submit that the petitioner was reimbursed the amount of Rs.15,330/- towards medical expenses. Therefore, the said amount, certainly, has to be deducted from the medical expenses of Rs.64,397/- granted by the Tribunal. To that extent, the appeal is to be allowed. Thus, the order and decree, dated 23-04-2008, in M.V.O.P. No.1030 of 2006, passed by the Tribunal are modified reducing the compensation from Rs.2,04,397/- to Rs.1,89,067/- (Rupees one lakh eighty nine thousand and sixty seven).

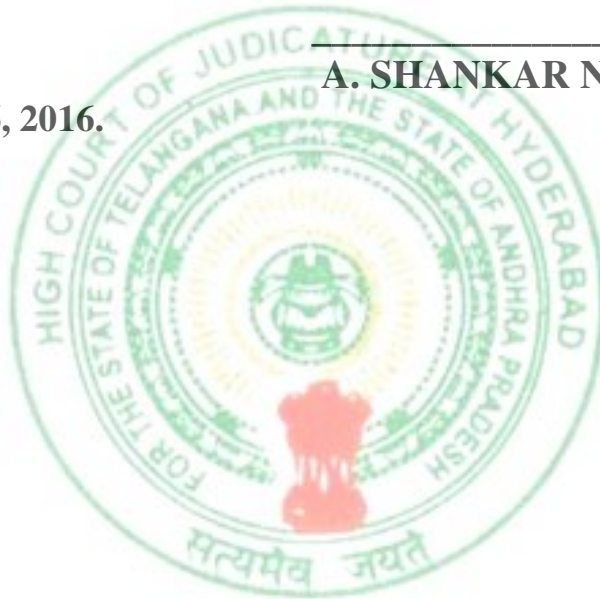
9. Even the rate of interest at 7.5% granted by the Tribunal is maintained as the same is in tune with the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

10. Accordingly, the appeal is allowed in part, as indicated in the above. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

December 26, 2016.
Mgr

A. SHANKAR NARAYANA, J



¹. 2013 ACJ 1403