

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4525 OF 2004

JUDGMENT:

Dissatisfied with the award of Rs.41,000/- towards compensation by the order and decree dated 24.07.2004 in O.P. No.1331 of 2000, by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Nalgonda, as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988, the petitioner, who is claimant, preferred the present Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988.

2. By the aforesaid order, the learned Chairman, while discarding the petitioner's stand that he suffered shortening of left leg by four inches (4") and also the stand that he was limping, on the ground that he was not supported by PW.2, medical officer, who examined him and also on the ground that no documentary evidence is forthcoming to strengthen that stand, granted Rs.40,000/- towards injuries including loss of wages for five (5) months and a sum of Rs.1,000/- towards medical expenses by overlooking five (5) bills showing the amounts Rs.2,350/-, Rs.135/-, Rs.2,055/-, Rs.73/- and Rs.4,150/- on the ground that he (petitioner) failed to prove that he sustained disability by way of adducing any satisfactory evidence and also failed to prove the afore-referred said bills.

3. Heard Sri T. Viswarupa Chary, learned counsel for the appellant - petitioner, and Sri Vutla Srinivasa Rao, learned counsel for respondent No.2 viz., United India Insurance Company Limited, which is insurer of the Van bearing No.AP-16-U-2969 that involved in the accident, and perused the material on record.

4. The petitioner has endorsed in the cause title of the grounds of appeal that respondent No.1, owner of the van that involved in the accident, is not a necessary party as he remained *ex parte* and suffered the order passed by the Tribunal.

5. The learned counsel for the petitioner would submit that the evidence of PW.2 was recorded by the Advocate-Commissioner and even the disability certificate showing shortening of left lower limb by two inches (2”), but, somehow, the said document is not marked as the commissioner recorded the evidence and not brought to the notice of the Tribunal and that led the Tribunal to believe that there is no evidence worth the name to record the stand of the petitioner that he suffered shortening of left leg by two inches at least.

6. A perusal of the evidence of PW.2 would reflect that the first injury suffered by the petitioner was Grade - III compound fracture of both bones of left leg. On 05.06.2000, skin grafting was done for the wound and on 20.06.2000, manipulative reductions of the fractures were done and above the knee, casing was done and on 22.06.2000, the petitioner was discharged on advise to go over to out-patient ward

after a month. Ex.P-4 is the discharge ticket. He (PW.2) opined that fracture of both bones was grievous in nature and, therefore, he has to take rest for a minimum of three to four months. Of course, the suggestion made to him that the injuries were simple in nature was bluntly denied by him. He is a professor who worked in Osmania General Hospital. Since he was Orthopaedic Surgeon, he handled the petitioner and conducted surgical interventions.

7. When kept in view, that the petitioner suffered Grade-III compound fracture of both bones of left leg and the skin grafting, the amount of Rs.40,000/- granted by the Tribunal which includes temporary loss of earnings for a period of five (5) months is not just and adequate and it is not clear as to how the learned Chairman has arrived at the amount of Rs.40,000/-. It looks, more or less, granting of a global compensation. Where serious injury is caused, it would have been proper for the learned Tribunal to evaluate the evidence of the medical officer in the light of the medical evidence and arrive at the amount while granting compensation which is not being resorted to, somehow, by the learned Tribunal.

8. Be that as it may, keeping in view the nature of injury and the fact that the petitioner had undergone treatment as inpatient from 11.05.2000 to 22.06.2000, undergoing surgical interventions, it would be reasonable to grant Rs.40,000/- towards injuries and pain and suffering. The petitioner was 18 years old at the relevant time, according to the doctor. He was a labourer and keeping in view that

he would be earning Rs.2,000/- per month, it would be reasonable to award six (6) months earnings, in which case, he becomes entitled to Rs.12,000/- towards loss of past earnings. Towards extra-nourishment, a sum of Rs.10,000/- is granted, keeping in view the injuries sustained by him. Towards transportation charges, a sum of Rs.5,000/- is awarded. Towards attendant charges, for a period of five (5) months, at the rate of Rs.1,500/-, a sum of Rs.7,500/- is awarded.

8. Thus, the petitioner is entitled to a total compensation of Rs.74,500/- (Rupees seventy four thousand and five hundred only) as against Rs.41,000/- awarded by the Tribunal, and the same is accordingly granted. However, the rate of interest at 9% per annum is maintained on the amount of Rs.41,000/- granted by the Tribunal, but, on the enhanced amount of Rs.33,500/-, interest is granted at 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**¹ from the date of petition till realisation.

9. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

September 18, 2017.

PV

¹ 2013 ACJ 1403 (SC) (F)B

