

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3980 OF 2004

JUDGMENT:

Dissatisfied with the award of Rs.38,000/- towards compensation for the injuries sustained by the petitioner in O.P. No.160 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Nalgonda (for short 'Tribunal') as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act'), the present Appeal is filed under Section 173 of the Act, seeking enhancement of compensation.

2. By the order, dated 28.05.2004, in the aforesaid O.P., the Tribunal awarded the aforesaid amount, which consists of Rs.5,000/- towards each grievous injury making a total of Rs.15,000/- and Rs.23,000/- towards medical expenses, making a total of Rs.38,000/-.

3. The appellant herein is the petitioner in O.P. No.160 of 2001, while respondent Nos.1 and 2, who are owner and insurer of Maruti Car bearing registration No.AP 9J 3582, respectively, are arrayed as such.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid OP before the Tribunal.

5. Heard Sri A. Madhava Reddy, learned counsel for the appellant - petitioner. Respondent No.2 - M/s. New India Assurance Company Limited though served with notice, has not entered appearance. Respondent No.1, owner of the vehicle, remained *ex parte*. He had also remained *ex parte* before the Tribunal and suffered decree.

6. So far as the fact-situation is concerned, it cannot be disputed now and there is no need to discuss since it is not an appeal preferred by the Insurer. The injuries sustained by the petitioner as could be seen from the evidence of doctor, who is examined as PW.2 and wound certificate, Ex.A-2, dated 04.11.2000, shows that the petitioner sustained fracture of shaft tibia on right side and fracture of shaft right humerus with ulnar nerve and undergone surgical intervention on 15.11.2000 by negotiating a nail into right tibia and plate and screw fixation was done on right humerus, and the petitioner was admitted on 14.11.2000 and was discharged on 02.12.2000. But, PW.2 is a private doctor. According to him, the leg fracture was united, but humerus fracture was not united and he found ulcer policy was recovered. He testified the bunch of prescriptions and medical bills under Ex.A-6 which relate to the expenditure of Rs.13,360/- and Rs.10,000/- towards nursing home charges.

7. Be that as it may, there have been fracture of both bones of right leg and right hand. Therefore, the amount of Rs.15,000/- granted towards the same appears to be on lower side. Keeping in view, the

nature of injuries sustained by the petitioner, the same is enhanced to Rs.50,000/-. The medical expenditure of Rs.23,000/- granted by the Tribunal is maintained. The amount of Rs.10,000/- spoken to by the doctor towards future surgery to the right arm as the bone was not united is also granted. Towards extra nourishment, a sum of Rs.10,000/- is granted. Keeping in view that at least for four months, he would not have able to gain normalcy in his movement, towards loss of temporary earnings, over a period of six months @ Rs.1500/- per month, a sum of Rs.6,000/- is granted. Towards attendant charges, a sum of Rs.6,000/- is granted. Thus, in all, the petitioner is entitled to Rs.1,05,000/- (Rupees one lakh and five thousand) as compensation as against the amount of Rs.38,000/- awarded by the Tribunal.

8. Concerning rate of interest, the Tribunal has granted the same at 9% per annum, which is not disturbed on the amount awarded by the Tribunal. However, interest at 7.5% per annum is awarded on the enhanced amount from the date of petition till the date of realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

9. In the result, the appeal is allowed in part, and the order and decree, dated 28-05-2004, in O.P. No.160 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.1,05,000/-

¹. 2013 ACJ 1403

(Rupees one lakh and five thousand) from Rs.38,000/- with interest at the rate of 9% per annum on the amount of Rs.38,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.67,000/- from the date of petition till the date of realization, and in all other respects, the order and decree is confirmed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

September 11, 2017
Mgr

A. SHANKAR NARAYANA, J

