

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1991 OF 2004

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, by the petitioner in O.P. No.746 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Nalgonda (for short 'Tribunal'), requesting to grant balance amount as the compensation of Rs.25,000/- awarded as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 is grossly inadequate and not just compensation.

2. The aforesaid amount was granted by the Tribunal by order, dated 28.10.2003, in the aforesaid O.P.

3. The appellant herein is the petitioner in O.P. No.746 of 2000, while respondent Nos.1 and 2, who are owner and insurer of Tractor and Trailer bearing Registration Nos.AAL 9527 and 9528, are arrayed as respondents respectively.

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

5. The Tribunal having framed the relevant issues, basing on the evidence of PWs.1 and 2, amongst whom, PW.2 is Dr. P. Ashwini Kumar, a Medical Officer, who runs a private Nursing Home, and

Exs.A-1 and A-2, which are certified copy of First Information Report and true copy of injury certificate, while not taking the permanent disability of 15% spoken to by PW.2 into consideration on the ground that no disability certificate was filed having obtained from the Medical Board, granted a sum of Rs.15,000/- towards fracture sustained by the petitioner and Rs.10,000/- towards pain and suffering, thus, a total of Rs.25,000/- was granted as compensation with interest at 9% per annum thereon.

6. Heard Sri T. Viswarupa Chary, learned counsel for the appellant - petitioner, and Sri Gadi Ramachandra Reddy, learned standing counsel for respondent No.2 - Insurer. The appeal against respondent No.1 was dismissed for default on 19.11.20015. Since respondent No.1 suffered a decree before the Tribunal, his absence would not make any difference in adjudicating upon the request herein.

7. As could be seen from the Appendix of Evidence, as rightly contended by the learned standing counsel for respondent No.2 - Insurer, no disability certificate is forthcoming, nor medical certificate issued by any of the Area Hospital i.e., Government Hospital. In fact, Ex.A-2 was issued by PW.2. Initially, when accident takes place, invariably when FIR was registered, injured would be referred to a Government Hospital in the nearby area. But, however, the Tribunal believed Ex.A-2 on the main ground that the concerned police referred the petitioner to PW.2. Therefore, the injury sustained by

PW.1 cannot be doubted, more particularly, when there is no appeal preferred by respondent No.2 - Insurer.

8. Now, the amount of Rs.15,000/- granted towards injury and Rs.10,000/- towards pain and suffering are just and adequate is require to be considered. In fact, the order shows that there is fracture over left medial malleolus and, therefore, the said amounts awarded by the Tribunal are maintained. But, however, the Tribunal has not awarded any amounts under the heads 'extra nourishment', 'loss of temporary earnings' and 'transport charges'. Therefore, keeping in view, that the petitioner was treated for 15 days as in-patient as per the evidence of PW.2, certainly, he is entitled to extra nourishment. Towards the same, a sum of Rs.5,000/- is granted. Towards temporary loss of earnings, keeping in view that the petitioner would not have attended to the work at least for two months, a sum of Rs.4,000/- is granted. Towards transport charges, a sum of Rs.2,000/- is granted. Thus, in all, the petitioner is entitled to 36,000/- as compensation as against Rs.25,000/- awarded by the Tribunal.

9. The learned counsel for the petitioner, no doubt, placed reliance in **Charan Singh v. G. Vittal Reddy and another**¹ rendered by a Hon'ble Division Bench of this Court for the proposition that any qualified doctor can assess the loss of disability *vis-à-vis* earning capacity, and it is not necessary that he should be the same doctor who treated the injured, there cannot be any quarrel in regard to the

¹. 2003 (4) ALD 183 (DB)

proposition laid down by the Hon'ble Division Bench of this Court, but the question is, no disability certificate at all is forthcoming except the assertions made by PW.2. Further, the restriction of ankle movement with reference to the degrees of restriction is not forthcoming. Therefore, the aforesaid decision would not render any assistance to the petitioner.

10. Concerning rate of interest, the Tribunal 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 date of realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**².

11. In the result, the appeal is allowed in part, and the order and decree, dated 28-10-2003, in O.P. No.746 of 2000, passed by the Tribunal, are modified, enhancing the compensation to Rs.36,000/- (Rupees thirty six thousand) from Rs.25,000/- with interest at the rate of 9% per annum on the amount of Rs.25,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.11,000/- (Rupees eleven thousand) from the date of petition till date of realization, and affirming the order and decree in all other respects. There shall be no order as to costs.

². 2013 ACJ 1403

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

A. SHANKAR NARAYANA, J

September 14, 2017
Mgr

