

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1227 OF 2004

JUDGMENT:

As against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act') in M.V.O.P. No.19 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Kadapa (for short 'Tribunal'), a sum of Rs.40,000/- was awarded as compensation with interest at 9% per annum thereon, by order, dated 23.12.2003, and aggrieved thereby the appellant - petitioner preferred the present appeal under Section 173 of the Act requesting to grant balance amount on the ground that the amount awarded was wholly inadequate and would not meet the object of 'just and fair compensation'.

2. The appellant herein is the petitioner in the aforesaid MVOP, while respondent Nos.1 and 2, who are owner and insurer of Oil Tanker bearing registration No.TMI.585, are arrayed as such and respondent Nos.3 and 4, who are owner and insurer of Jeep bearing registration No.AP 04/B 9864, are also arrayed as such.

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

4. Heard Smt. S. Kiranmayee, learned counsel for Sri D. Kodanda Rami Reddy, learned counsel for the appellant, and Sri

N. Mohan Krishna, learned standing counsel for respondent No.2 - M/s. National Insurance Company Limited. No representation for respondent No.4 - M/s. United India Insurance Company. Respondent No.3, despite service of notice, has not entered appearance. So far as respondent No.1 is concerned, the appeal was dismissed against him for default, by order, dated 19.11.2015.

5. The Tribunal, of course, dismissed the claim against respondent Nos.3 and 4, owner and insurer, respectively, of the Jeep in which the petitioner was travelling holding that only on account of rash and negligent driving of the oil Tanker belonging to respondent No.1 and insured with respondent No.2 was at fault.

6. The Tribunal having discussed elaborately as to the nature of injuries sustained by the petitioner as shown in Ex.A-2 which are fracture of both bones, ulna and radius in lower 1/3rd of right forearm, and two simple injuries and the treatment undergone in S.V.R.R. Hospital, Tirupati, but, however, did not incline to grant the amount of Rs.76,338/- under Ex.A-6, of course, assigning the reasons that bunch of medical bills, amongst which, most of the bills do not contain the name of the patient, and thereby discarded the said amount. However, an amount of Rs.2,593/- was granted as the medical bills of S.V.R.R. Hospital shows the total amount as Rs.4,186/- that was required to be paid by the petitioner and having given concession of Rs.1,593/-, it collected Rs.2,593/-; Ex.A-7 was also discarded which was for

Rs.4,000/- towards hire charges paid to the jeep as none of the witnesses were examined to prove the same; thereafter, having analyzed the evidence of PWs.1 and 2 and even discarding the disability spoken to by PW.2 and the percentage of disability shown by him under Ex.A-4 on the ground that only for sole purpose of claiming compensation based on disability, PW.2 was examined, that too, two years after the date of accident and he did not treat PW.1, the evidence of PW.2 as well as Ex.A-4 were excluded. The Tribunal felt that a lump sum compensation of Rs.40,000/- would meet the ends of justice and, accordingly, granted the same. Thus, the Tribunal, somehow, overlooked the fact that for determination of compensation amounts under each head both pecuniary and non-pecuniary, required to be assessed the amounts and then award the compensation. Be that as it may, the findings recorded by the Tribunal in excluding PW.2's evidence and Ex.A-4 cannot be faulted and so also Ex.A-6 amount as cogent reasons have been assigned there-for.

7. Now, turning to the injuries sustained by the petitioner, it was a fracture of both bones, ulna and radius in lower 1/3rd of right fore-arm, for which he is entitled to Rs.35,000/- by any standard including pain and suffering. For two simple injuries, a sum of Rs.6,000/- is awarded. The Tribunal has not granted any amount towards extra nourishment. Therefore, towards the same, a sum of Rs.10,000/- is granted.

8. The learned counsel would submit that the petitioner was a weaver, and on account of fractures to his right fore-arm, he was unable to operate the loom, and thereby there was temporary disability at least in earning the amounts for some period. Keeping in view that he would have been earning Rs.2,000/- per month at an average and for a period of three months he must have been disabled, a sum of Rs.6,000/- is awarded. Towards transport charges, the Tribunal though, discarded Ex.A-7 for Rs.4,000/-, still the petitioner is entitled to a sum of Rs.2,000/- for visiting the hospital for follow-up action. Thus, the petitioner is totally entitled to Rs.59,000/- as against Rs.40,000/- granted by the Tribunal.

9. 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, on the enhanced amount of Rs.19,000/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

10. In the result, the appeal is allowed in part, and the order and decree, dated 23-12-2003, in M.V.O.P. No.19 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.59,000/- from Rs.40,000/- with interest at the rate of 9% per annum on the amount of Rs.40,000/- granted by the Tribunal and at

¹. 2013 ACJ 1403

the rate of 7.5% per annum on the enhanced amount of Rs.19,000/- from the date of petition till 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, stand disposed of.

A. SHANKAR NARAYANA, J

August 10, 2017.

Mgr

