

**THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**Civil Miscellaneous Appeal No.2338 OF 2004**

**JUDGMENT:**

The present appeal is filed questioning the award of Rs.1,55,000/- towards compensation for the injuries sustained by the petitioner/appellant on the ground that the awarded amount was not just and adequate when viewed in the context of suffering she had undergone.

2. The learned Chairman, Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal'), by his order dated 13.02.2003 in O.P. No.977 of 2001 awarding the aforesaid amount as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

3. The factual aspect is not in dispute.

4. Now, the only short question that falls for consideration is, whether the appellant is entitled to enhanced compensation, and, if so, to what amount?

5. Heard Sri Chandrasekhar Reddy Gopireddy, learned counsel for the appellant, and Sri M. Jeevan Reddy, learned Standing Counsel for the 2<sup>nd</sup> respondent – M/s. National Insurance Company Limited. So far as the 1<sup>st</sup> respondent is concerned, it appears he

remained *ex parte* before the Tribunal and suffered the decree. The 1<sup>st</sup> respondent, being the owner of the Auto bearing No.AP-23-T-5613, hit the petitioner-claimant resulting in head injury and other injuries to the person. The petitioner-claimant had undergone treatment in NIMS Hospital as In-patient from 29.11.2000 to 16.12.2000, that was the first spell, and, again from 30.12.2000 up to 22.1.2001, being the second spell.

6. The learned Chairman, having framed three issues, has formulated two points and answered both the points in the affirmative. So far as the determination of compensation is concerned, the learned Chairman awarded Rs.3,000/- as against Rs.36,000/- claimed under the head 'Loss of earnings'. The petitioner's case was that for about one year she was unable to earn anything. The learned Chairman, having taken into account 18 days treatment as In-patient and 11 days treatment as In-patient for two spells, awarded the amount of Rs.3,000/- towards 'Loss of earnings' due to hospitalization. Towards 'Transport to Hospital' Rs.2,000/- was awarded as against the claim of Rs.8,000/- on the ground that the petitioner had to go to the hospital only on two occasions and for a total period of not less than 2 months. Towards 'medicines and extra-nourishment' as against the claim of Rs.70,000/- basing on the contents in Exs.A3 to A10, A12 & A13, an amount of Rs.60,000/- was awarded by the Tribunal. Thus, a total sum of Rs.65,000/- was awarded under Special Damages.

7. The learned Chairman referring to the claim made under 'General Damages' awarded Rs.15,000/- towards 'pain and suffering' and Rs.75,000/- towards 'disability' basing on the evidence of P.W.2, medical officer, examined by P.W.1. It is true, as contended by the learned counsel for both sides, no disability certificate appears to have been issued to measure the percentage of disability. But, however, the fact that the evidence of P.W.2 was believed by the learned Chairman and taking into account that the petitioner on account of accident suffered some deficiencies i.e., mental faculty problems and she requires an attendant even for routine duties as she sustained injury to the brain and also the injury to left upper limb and even in regard to her gait there was deviation subsequent to the accident due to the damage to the brain cells cannot be sidelined. The Tribunal granted Rs.75,000/- towards disability.

8. Learned counsel for the appellant would submit that the amounts awarded by the Tribunal under various heads are on lower side, more particularly, so far as disability is concerned for the reason that the petitioner had to suffer throughout her life, she being 42-year-old on the date of accident and at least 'life expectancy' would be for another 18 years. On the other hand, learned Standing Counsel for the 2<sup>nd</sup> respondent would support the order referring to the amounts awarded under various heads and there is no disability at all so as to measure the percentage of disability basing on which compensation could have been awarded.

9. Keeping in view the submissions made by both sides, so far as the amount of Rs.3,000/- granted towards 'loss of temporary earnings' due to hospitalization as against Rs.36,000/- the Tribunal appears to have gone wrong where the petitioner sustained such serious injuries and even it is forthcoming during the course of arguments that she was on ventilators having been under coma for certain period and, therefore, it is difficult to view that within two months she would be able to get normalcy to attend to her occupation hitherto she was doing. Therefore, the amount of Rs.3,000/- is enhanced to Rs.15,000/-.

10. Turning to the amount of Rs.2,000/- awarded towards 'transport to the hospital' the Tribunal has only viewed that the petitioner would have gone to the hospital twice i.e., for two spells she was treated as In-patient. The Tribunal, somehow, overlooked the fact that after discharge from the hospital the petitioner-claimant was supposed to attend to the hospital for follow-up treatment. When the same is kept in view, the amount of Rs.2,000/- granted by the Tribunal requires enhancement and, therefore, it is enhanced to Rs.5,000/-. Towards 'medicines and extra-nourishment' as against Rs.70,000/- the Tribunal awarded a sum of Rs.60,000/- and the same is maintained for the reason the medical expenses were to the tune of Rs.43,764-95 ps, on the basis of medical bills submitted, which are marked as exhibits. The rest can be viewed as the amount granted towards 'extra nourishment'. Towards 'pain and suffering' the

amount sought for by the petitioner was Rs.15,000/- and the same was awarded.

11. Now, turning to the disability, though there is no disability certificate issued by P.W.2, still, the evidence of P.W.2 is clear showing that there was some deficiencies so far as the petitioner/claimant is concerned, as the very assertion of the medical officer that the petitioner/claimant requires attendant throughout even to attend her routine duties on account of injury to brain cells and other disability spoken to by P.W.2 on account of injury left upper limb and also the gait, certainly, the amount of Rs.70,000/- granted by the Tribunal requires enhancement. Therefore, it is enhanced to Rs.1,25,000/-. Thus, the petitioner/claimant is totally entitled to compensation of Rs.2,20,000/- as against Rs.1,55,000/- awarded by the Tribunal.

12. In the result, the Appeal is partly allowed enhancing the compensation from Rs.1,55,000/- (Rupees One lakh and fifty five thousand only) to Rs.2,20,000/- (Rupees Two lakhs and twenty thousand only). The rate of interest at 9% p.a. granted by the Tribunal on Rs.1,55,000/- is maintained and on the enhanced amount of Rs.65,000/- interest at the rate of 7.5% p.a. is awarded from the date of claim petition till realization keeping in view, the ruling in **Rajesh v. Rajbir Singh**<sup>1</sup>. There shall be no order as to costs.

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<sup>1</sup> (2013) 9 Supreme Court Cases 54



As a sequel thereto, miscellaneous petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

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**A. SHANKAR NARAYANA,J**

Dt. 05.10.2017  
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