

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.386 OF 2014

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), aggrieved over the order and decree, dated 31.01.2011, passed by the Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Adilabad (for short 'Tribunal') in O.P. No.344 of 2008 awarding a sum of Rs.1,24,000/- as compensation as against the claim laid for Rs.3,00,000/- under Section 166 of the Act.

2. The appellant herein is petitioners in the aforesaid O.P. while respondent Nos.1 and 2, who are owner and insurer of Auto-rickshaw bearing registration No.AP 25V 6464, respectively, are respondents as such.

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

4. Heard Sri S. Surender Reddy, learned counsel for the appellant - petitioner and Sri Gadi Ramachandra Reddy, learned standing counsel for respondent No.2 - Insurer. Though, service was completed on respondent No.1, owner of the vehicle, none appears. In fact, respondent No.1 suffered decree passed by the Tribunal.

5. The main ground agitated is that the Tribunal did not properly appreciate the evidence, and thereby erred in awarding meager compensation as against the fair and adequate compensation principle laid down by the provisions of the Act. That has been the main submission of the learned counsel for the petitioner.

6. So far as the fact-situation is concerned, there is no dispute between the parties. The Tribunal having framed three issues, examining PWs.1 and 2 and marking Exs.A-1 to A-10 and Ex.X-1 on behalf of the petitioner, and none on behalf of the respondents, awarded Rs.20,000/- towards loss of earnings for three months; Rs.12,000/- towards transportation charges, which is covered by Ex.A-5; Rs.5,000/- towards extra nourishment as claimed; Rs.47,000/- towards medical expenses; and Rs.40,000/- towards pain and suffering and, thus, a total sum of Rs.1,24,000/- was awarded for the fractures sustained by the petitioner with interest at 8% per annum thereon.

7. The evidence of the doctor as well as the medical records marked as Exs.A-2, Ex.A-3, Ex.A-10 and Ex.X-1 would show that the petitioner sustained fracture of both bones of right leg and fracture of 3rd metacarpal index finger, and of course, other injuries and he had undergone surgical intervention on 18.02.2008 for the fracture of both bones of right leg and interlocking nailing was fixed with two screws and POP was applied for the fracture of 3rd metacarpal index finger and was discharged on 26.02.2008. The petitioner, no doubt, claimed that he has spent Rs.80,000/- towards medical expenses, but the bills

he has filed through Exs.A-3 to A-5 would indicate that only Rs.47,000/- was the total amount paid under those bills. Therefore, it is difficult to award more than what has been awarded by the Tribunal towards medical expenses.

8. So far as the amount of Rs.40,000/- granted towards pain and suffering is concerned, the petitioner sustained fracture of both bones of right leg, which is one of the main lower limbs, on account of which, he would have become immobilized for a considerable period, besides sustaining fracture of 3rd metacarpal index finger and undergoing surgical intervention for both the injuries and, therefore, the sum of Rs.40,000/- awarded by the Tribunal is on lower side and the same is enhanced to Rs.60,000/-, keeping in view, the sufferance which the petitioner had undergone.

9. So far as the loss of earnings at Rs.20,000/- is concerned, his claim was for Rs.24,000/- at the rate of Rs.8,000/- per month. The Tribunal awarded Rs.20,000/-, the same is enhanced to Rs.24,000/- as claimed. The amount of Rs.5,000/- towards extra nourishment is maintained as the claim made by the petitioner was awarded by the Tribunal. The amount of Rs.12,000/- awarded by the Tribunal towards transportation charges is also maintained. It appears, the Tribunal has not awarded any amount towards attendant charges. Therefore, towards attendant charges @ Rs.2,000/- per month for a period of three months, a sum of Rs.6,000/- is awarded, and admittedly there is no partial permanent disability sustained by the

petitioner. Thus, the petitioner is totally entitled to Rs.1,54,000/- as against Rs.1,24,000/- awarded by the Tribunal.

10. Concerning rate of interest, the Tribunal granted the same at 8% 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 of Rs.30,000/- 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**¹.

11. In the result, the appeal is allowed in part, and the order and decree, dated 31-01-2011, in O.P. No.344 of 2011, passed by the Tribunal, are modified, enhancing the compensation to Rs.1,54,000/- (Rupees one lakh and fifty four thousand) from Rs.1,24,000/- with interest at the rate of 8% per annum on the amount of Rs.1,24,000/- awarded by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.30,000/- from the date of petition till date of realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

October 20, 2017
Mgr

¹. 2013 ACJ 1403