

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3820 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988, is preferred by the claimant seeking to grant balance amount as he was dissatisfied with the amount of Rs.13,000/- granted towards compensation as against the claim of Rs.1,00,000/- made by him under Section 166 of the Motor Vehicles Act, 1988. Interest was granted at 9% per annum by the Tribunal on the amount of Rs.13,000/-.

2. The fact-situation as regards the manner in which the accident has taken place is not in dispute and, therefore, there is no need to refer to the same.

3. Heard Sri K. Sarala Mahender Reddy, learned counsel for the appellant - claimant, and Smt. Jonna Ramani, learned counsel for respondent No.2 - insurer, and perused the material on record.

4. The present appeal was dismissed against respondent No.1 on 08.02.2016, but, since he being the owner of the lorry bearing No.AAT - 4029 that involved in the accident and has already suffered the decree passed by the Tribunal, his absence is immaterial and dismissal of the appeal against him will not affect adjudication of the controversy in the present appeal in view of the decision of a Division

Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao alias Reddemma**¹.

5. The learned Tribunal has awarded Rs.7,000/- for fracture of both bones of right leg as could be seen from Ex.A-3, injury certificate and Rs.3,000/- towards simple injury and also Rs.3,000/- towards extra-nourishment, and, thus, awarded a total sum of Rs.13,000/- towards compensation.

6. The learned counsel for the claimant would submit that the amount granted by the Tribunal is grossly inadequate and it does not constitute just and fair compensation. It is no doubt true, according to the learned counsel, though the disability certificate is marked as Ex.A-5, for the reason that the certificate was issued by PW.2 Dr. L. Ramulu, it was not considered. Still, from the nature of injuries sustained by the claimant as described in the injury certificate under Ex.A-3, certainly, he deserves enhanced compensation. Ex.A-3 would reflect that the claimant sustained fracture of both bones of his right leg, laceration admeasuring 15 x 2 centimeters on the scalp and, of course, he was treated as out-patient on 16.07.2001 at 5.00 p.m. The learned Tribunal noticing that the claimant has not offered any explanation for his failure to get examined through the Government Medical Board doctors, discarded Ex.A-5.

¹ 2002 ACJ 828, 2001 (1) ALD 453, 2001 (1) ALT 495

7. Be that as it may, there have been occasions, where this Court also did not believe the evidence of PW.2 Dr. L. Ramulu and Dr. T. Narsing Rao, and even recorded that they are in the habit of exaggerating the disability and also issuing false certificates. Therefore, that finding recorded by the Tribunal cannot be upset.

8. So far as Rs.7,000/- amount granted towards fracture of both bones of right leg is concerned, certainly, the same is grossly inadequate. Therefore, the same is enhanced to Rs.25,000/-. The amount of Rs.3,000/- granted towards pain and suffering is enhanced to Rs.10,000/-. The amount of Rs.3,000/- granted towards simple injury is maintained. The claimant was also granted a sum of Rs.4,500/- towards attendant charges for a period of three months at Rs.1,500/- per month, and Rs.1,000/- towards transportation charges. Thus, the claimant is totally entitled to Rs.43,500/-.

9. Thus, the claimant is totally entitled to a sum of Rs.43,500/- (Rupees forty three thousand five hundred only) as against Rs.13,000/- granted by the Tribunal and the same is accordingly granted while maintaining the rate of interest at 9% per annum on the amount granted by the Tribunal, and at 7.5% per annum on the enhanced amount from the date of petition till realisation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh**².

² 2013 ACJ 1403] {SC-FB – Three-Judge}

10. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the award by enhancing the compensation as indicated above. 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 17, 2017.

MGR/PV

2013 ACJ 1403 SC

