

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2844 OF 2004

JUDGMENT:

Heard Sri T. Viswarupachary, learned counsel for the appellant, Ms. I. Maamu Vani, learned counsel for respondent No.2 - The Oriental Insurance Company Limited, which is insurer of the Ambassador Car bearing No.AP-9-AA-7965 belonging to respondent No.1, and Sri Venkateswarlu Potha Pragada, learned counsel respondent No.4 - The United India Insurance Company Limited, which is insurer of the Scooter belonging to respondent No.3, and perused the material on record.

2. Against respondent No.3, owner of the Scooter bearing No.AP-9-H-9105, the present appeal was dismissed for default on 08.02.2016.

3. The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, requesting to grant the balance amount of Rs.85,000/- as the compensation of Rs.65,000/- awarded by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Nalgonda, by order and decree dated 15.11.2003 in O.P. No.561 of 2000, was grossly inadequate, as there has been deformity sustained by the petitioner at the young age of sixteen (16) years, which he has to bear with through out his life on account of the injury which is a closed fracture of right tibia 1/3rd.

4. The learned counsel for the appellant - petitioner would submit that the evidence of PW.2, the doctor, would show that he has assessed the disability as 30%, but, the Tribunal has not taken into consideration the disability and only for deformity, granted Rs.30,000/- besides awarding Rs.5,000/- towards pain and suffering, and Rs.30,000/- towards fractures. Thus, a total sum of Rs.65,000/- was granted towards compensation.

5. The learned standing counsel for the insurer (respondent No.2) would support the order and the decree under challenge stating that the disability certificate was not issued by the competent Medical Board.

6. A perusal of the material on record would show that PW.2, who is the medical officer, would assert that he found fracture of right tibia and thereby, the petitioner was limping and he cannot lift and carry heavy weights and cannot walk long distances and, therefore, he assessed 30% permanent disability. But, Ex.A-2 medico legal record of the Osmania General Hospital would show the deformity of right leg of the petitioner (PW.1) and closed fracture of right tibia 1/3rd is to be found as per Ex.A-9, the radiologist report.

7. Even excluding 30% disability for want of convincing evidence on record, the amount of Rs.30,000/- granted towards two fractures appears to be on lower side and, therefore, the same is enhanced to Rs.50,000/- at Rs.25,0000/- for each fracture. Since the

petitioner has to suffer through out his life and it is not clear whether the same can be rectified by surgical interventions, the amount of Rs.30,000/- granted towards deformity is enhanced to Rs.60,000/-. Further, the amount of Rs.5,000/- granted towards pain and suffering is enhanced to Rs.15,000/-. A sum of Rs.10,000/- is granted towards extra-nourishment and transport charges put together.

8. Thus, the petitioner is entitled to a total compensation of Rs.1,35,000/- (Rupees one lakh thirty five thousand only) as against Rs.65,000/- awarded by the Tribunal, and the same is accordingly granted. However, the rate of interest at 9% per annum is maintained on the amount of Rs.65,000/- granted by the Tribunal, but, on the enhanced amount of Rs.70,000/-, interest is granted at 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**¹, from the date of petition till realisation.

9. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order and 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 closed.

A. SHANKAR NARAYANA, J

September 14, 2017.

PV

¹ 2013 ACJ 1403 (SC) (F)B