

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CMA No.3207 of 2004

Date: 11-09-2017

Between:

Kandula Savitri.

... Appellant.

And

P. Paidi Raju and others.

... Respondents.



THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**CMA No.3207 of 2004****JUDGMENT:**

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 having got dissatisfied with the amount of Rs.5,000/- awarded as against Rs.1,35,000/- claimed under Section 166 of the Motor Vehicles Act. Further, the learned Chairman, Motor Accidents Claims Tribunal-cum- Additional District Judge, Vizianagaram by his order dated 04-10-2002 in O.P.No.45 of 2000 having analyzed the evidence of medical officers, who were examined as P.Ws.2 & 3, the evidence of petitioner-claimant who was examined as P.W.1 and documentary evidence of Exs.A1 to A7, some how, opined that the nature of injury sustained by the petitioner was simple basing on the entries in Ex.A2. The Tribunal also finding that P.W.2 has not spoken to that the injury sustained by P.W.1 was grievous in nature, granted a sum of Rs.2,000/- under the head medicines, transpiration to hospital and extra-nourishment. But he did not agree with the amounts mentioned in Ex.A5-bunch of medical bills for the reason that the prescriptions were not filed and exhibited under the head pain and suffering; a sum of Rs.2,000/- was awarded towards transport charges and another sum of Rs.1,000/- was awarded towards loss of earnings. Thus, a total sum of Rs.5,000/- was awarded as compensation with interest at 9% per annum from the date of petition till realization. Dissatisfied with the aforesaid amount awarded by the Tribunal, the present appeal is preferred requesting to grant the balance amount.

2. Heard Sri T. Nageswara Rao, learned counsel for the appellant and Sri Srinivasa Rao Vutla, learned counsel for the third respondent- United India Insurance Company Limited.

3. The present appeal was dismissed against Respondent No.1 for default. Respondent No.2, the owner of the vehicle, has not entered appearance despite service of notice on him.

4. The only point that requires for consideration in the present appeal is whether the amount awarded by the Tribunal is just and adequate or if not, to what amount the appellant is entitled to towards compensation for the injury he sustained.

5. So far as factual aspect is concerned, there is no dispute. The Chairman some how went wrong in propounding that the injury was simple basing on Ex.A2 entries overlooking the fact that Ex.A1 which is the charge sheet would clearly show that the offence alleged against the driver was under Section 338 IPC. Thus, it is clear that the learned Chairman ought to have relied on the evidence of P.W.2 to assess whether the petitioner sustained grievous injury or simple injury. P.W.2 who is medical officer attached to the Government Hospital, Vizianagaram. His evidence is to the effect that on 14-03-1999, the petitioner was admitted and on 15-03-1999 she was discharged and she is also exhibited Ex.X-1, which is the case sheet. In Ex.X1, the entries would reflect that the petitioner sustained crush injury to her left foot. This was spoken to by P.W.2. Therefore, the injury mentioned in Ex.X-1 would clearly prove that the petitioner sustained fracture, which is grievous in nature. Therefore, the entries in Ex.A2 would not prevail over the entries in Ex.X1. Further, the evidence of P.W.3 can be safely side lined on the mere ground that he

has not assessed as to whether P.W.1 sustained fracture or not. Certainly cannot be viewed to determine the compensation, where there is positive evidence of P.W.2 and Ex.X1, the original case sheet, summoned and exhibited. The Doctor opined that the petitioner sustained 15% disability on account of the crush injury sustained by the petitioner. She was 40 years old even according to the medical records and she has stated that she was earning Rs.100/- per day by attending to coolli work. The accident occurred in the year 1999 precisely to say that on 13-03-1999. Therefore, keeping in view that, when the disability cannot be accepted for the reason that the disability certificate was not issued by the Medical Board, but, however, for the injury and pain and suffering and under other heads, the petitioner is entitled to relevant sums since the crush injury was to the left foot with fracture, a sum of Rs.25,000/- is granted towards pain and suffering; towards extra nourishment a sum of Rs.5,000/- is granted; towards transport charges a sum of Rs.2,000/- is granted and towards loss of temporary earnings a sum of Rs.3,000/- is granted. Though the medical bills submitted, which are under Ex.A5, showing the amount said to have spent by the petitioner, was discarded by the Tribunal, but she is entitled to the said amount, since she sustained fracture as per evidence of P.W.2. Therefore, the amount of Rs.6,267/- under Ex.A5 is granted. Thus, the petitioner is totally entitled to Rs.41,267/- rounding it to Rs.42,000/-. The interest awarded by the Tribunal at the rate of 9% on Rs.5,000/- is maintained and on enhanced amount of Rs.37,000/-, interest at 7.5% is awarded from the date of petition till realization in view of decision in **RAJESH AND OTHERS vs. RAJBIR SINGH AND OTHERS¹**.

¹ 2013 ACJ 1403

6. Accordingly, the appeal is partly allowed. No costs.
7. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE A. SHANKAR NARAYANA

Date: 11-09-2017.
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