

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.2366 OF 2004

JUDGMENT:

Dissatisfied with the award of Rs.1,00,000/- as compensation for the injuries sustained by the petitioner in O.P. No.363 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Karimnagar (for short 'Tribunal') as against the claim of Rs.8,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act'), the present appeal is preferred by the petitioner under Section 173 of the Act seeking enhancement.

2. The appellant herein is the petitioner in the aforesaid O.P., while respondent Nos.1 to 3, who are driver, owner and insurer of Tipper bearing registration No.AP 36T 4705, respectively, are arrayed as respondents as such.

3. During pendency of the appeal, the sole appellant - petitioner died on 30.08.2010, and his legal representatives filed petitions to bring them on record as appellant Nos.2 to 5, and the said petitions are being ordered today itself.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the aforesaid O.P.

5. Heard Sri K. Jagadishwar Reddy, learned counsel for the appellants - petitioners and Sri Naresh Byrapaneni, learned standing

counsel for respondent No.3 - Insurer. In the cause title of the appeal, it is mentioned that respondent No.1, driver of the vehicle, is shown as not a necessary party. Though, notice served on respondent No.2, none appears.

6. The learned counsel for the petitioners would submit that despite the evidence of PW.3 - Medical officer, who treated PW.1, and even the deceased petitioner being removed from service by the General Manager, Singareni Collieries Company Limited, Area-III, on the ground that he was not fit to continue the job on account of the injuries he sustained in the present road accident, still, the Tribunal scored out the evidence of PWs.3 and PW.2 and also the documentary evidence filed by the deceased petitioner, granted only Rs.1,00,000/- towards compensation and, therefore, seeks to enhance the compensation.

7. Per contra, the learned Standing Counsel for respondent No.3 - Insurer would submit that the order passed by the Tribunal would clearly demonstrate that the deceased petitioner, somehow, managed to get the medical bills and suppressed the treatment given by the Government Doctor when he was initially referred to Government Hospital and managed PW.3 in getting the medical certificate (Ex.A-5) issued and, therefore, the Tribunal was right in making such serious observations against the petitioner and awarded Rs.1,00,000/- towards compensation.

8. Now, the short point that arises for consideration is, whether the deceased petitioner is entitled for enhancement of compensation?

9. It is true, the Tribunal in paragraph No.11 of page No.4 of the order expressed astonishment as to why the deceased petitioner deliberately suppressed the medical records or certificate issued by the Government Hospital, Ramagundam, and why the deceased petitioner did not, at least, summon and examine the Government Medical Officer and produce the hospital record. Second reason assigned by the Tribunal is, that the evidence of PW.3, who worked earlier in Shivaramakrishna Hospital, would show that the deceased petitioner was brought to the hospital, Karimnagar with injuries on 16.09.2000, whereas the accident had occurred on 15.09.2000 at about 7.15 p.m., and even in regard to 16 receipts/bills, seven were dated 15.09.2000 said to have prescribed by one Dr. B.V. Bhaskar and, therefore, the Tribunal expressed that it is not the case of the deceased petitioner that he took treatment with Dr. B.V. Bhaskar and the deceased petitioner also did not examine any Medical Officer to show that Ex.A-9 prescriptions/bills were prescribed by the Medical Officer and PW.3 never spoken that the deceased petitioner was required to purchase medicines under Ex.A-9 and, therefore, drawn the inference that the deceased petitioner managed with a private Medical Shop owner and created Ex.A-9 medical bills.

10. Touching PW.3's evidence, though, Ex.A-5 was said to have issued by PW.3, a Neuro Surgeon, but he did not perform the operation for the fractures sustained by the deceased petitioner. Though, the record shows that the deceased petitioner was operated on 16.09.2000 and he was discharged on 25.09.2000, and even the said certificate does not disclose the nature of treatment given to the deceased petitioner. The Tribunal also observed that PW.3 was silent about the nature of operation performed and, on the other hand, introduced totally new facts in his evidence by stating that the deceased petitioner was not able to speak properly and not able to move his left upper limb and left lower limb and he was taking the support of another attendant while walking and his coordination was also impaired. The Tribunal would observe that these details were not mentioned in Ex.A-5, and nothing prevented PW.3 in mentioning all these details in Ex.A-5 issued by him. Thus, it expressed that there has been deviation in regard to contents of Ex.A-5 and the evidence of PW.3 and drawn the inference arriving at that PW.3 deliberately intended to help the deceased petitioner.

11. In regard to permanent disability, the Tribunal observed that Ex.A-5 does not disclose that the deceased petitioner sustained any permanent disability, and Ex.A-7 issued by the Medical Officer is not proved by examination of any of the doctors, and thereby disbelieved the disability certificate's contents and also basing on its

own observation that the petitioner gave evidence as a normal human being. Hence, excluding the medical record relating to Shivaramakrishna Hospital, in which PW.3 said to have worked earlier, the Tribunal went on granting amounts just basing on the non-denial by the insurer as to the deceased petitioner sustaining right frontoparietal compound depressed fracture with underlying brain laceration or the fracture of patella on the right side and, therefore, granted Rs.20,000/- towards pain and suffering; Rs.40,000/- towards medicines and treatment in place of amounts mentioned in Exs.A-9, A-10 and A-11, as the Tribunal did not believe the contents thereof; and Rs.40,000/- towards present value of the future loss. The Tribunal also observed that the amount of Rs.3,00,000/- paid by the management of Singareni Collieries was perhaps to see that the deceased petitioner gets out of the job and provides job for his children. Thus, the Tribunal granted Rs.1,00,000/- with interest at 9% per annum from the date of petition till realization, directing to adjust the amount, if any, granted under no-fault liability.

12. When examined intrinsically, certainly, the reasoning adopted by the Tribunal cannot be faulted. There are inherent infirmities in the case of the deceased petitioner and the manner in which the deceased petitioner laid the claim. Firstly, he did not disclose undergoing treatment in a Government Hospital; second, he did not file any documentary proof; third, he did not even attempt to

summon the hospital record from the Government Hospital; fourth, the medical record of Shivaramakrishna Hospital would show that he was admitted on 16.09.2000, though, the deceased petitioner sustained injuries in the accident that took place on 15.09.2000 at 7.15 p.m., and the very fact that PW.3 has spoken that PW.1 was brought with bleeding injuries, certainly, has to be disbelieved and even the variation in evidence between Ex.A-5's contents and the assertions made by PW.3 would stand adverse to the case of the deceased petitioner. Therefore, the permanent disability discarded by the Tribunal and the finding recorded thereon cannot be interfered with.

13. Now, turning to the amounts awarded by the Tribunal basing on the injuries sustained by the deceased petitioner, it is no doubt true, the amount of Rs.20,000/- was granted towards pain and suffering, since the deceased appellant - petitioner died, it cannot be enhanced and, therefore, the same is maintained. The amount of Rs.40,000/- granted by the Tribunal towards medicines and treatment. But keeping in view, the nature of injuries sustained by the petitioner and the treatment he had undergone, the same is enhanced to Rs.60,000/-. The Tribunal also awarded Rs.40,000/- towards present value of future loss, observing that the injuries sustained by the deceased petitioner might have affected his future earning capacity. Since the deceased appellant - petitioner died, no amount can be awarded concerning the present value of future loss and, therefore, the

same is maintained. Since no amount is awarded by the Tribunal towards attendant and transportation charges, a sum of Rs.12,000/- towards attendant charges and Rs.10,000/- towards transportation charges are awarded keeping in view, the injuries sustained by the deceased petitioner referred to in the above. Thus, in all, the petitioners are entitled to Rs.1,42,000/- as compensation as against Rs.1,00,000/- granted by the Tribunal.

14. Concerning rate of interest, the Tribunal granted the same at 9% 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.42,000/- 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.

15. In the result, the appeal is allowed in part, and the order and decree, dated 22.04.2004, passed by the Tribunal in O.P. No.363 of 2001, are modified enhancing the compensation to Rs.1,42,000/- (Rupees one lakh and forty two thousand) from Rs.1,00,000/- granted by the Tribunal maintaining the rate of interest at 9% per annum on Rs.1,00,000/- awarded by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.42,000/- (Rupees forty two thousand) from the date of petition till payment. The legal representatives of the

¹. 2013 ACJ 1403

deceased petitioner are entitled to receive the compensation equally.

There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

October 23, 2017.

Mgr

