

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4831 OF 2004

JUDGMENT:

Dissatisfied with the award of Rs.5,04,962/- by order and decree, dated 30.09.2004, in O.P. No.275 of 2001, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Adilabad (for short 'Tribunal'), as against the claim of Rs.10,00,000/-, the present appeal is preferred by the petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act').

2. Appellant herein is the petitioner in the aforesaid O.P., while respondent Nos.1 and 2, who are owner and insurer of Lorry bearing registration No.MP 04K 3540, are respondents as such.

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

4. The facts, in brief, are that the petitioner was proceeding on his Motorcycle bearing registration No.AP 1D 1762 from Swarna towards Nirmal on National Highway No.7, and when he reached Viswanathpet of Nirmal town and having observed a lorry bearing registration No.MP 04K 3540 coming in opposite direction in a rash and negligent manner, took his motorcycle to extreme left side of road margin, but despite the same, the lorry entered into right side blacktop road and margin and hit the petitioner's motorcycle, due to which, he sustained multiple grievous and simple injuries.

5. Respondent No.1, owner of the lorry, remained *ex parte*.

6. Respondent No.2 - M/s. United India Insurance Company Limited opposed the claim by filing counter and additional counter.

7. Basing on the pleadings, the Tribunal framed three issues for trial.

8. During trial, the petitioner besides examining himself as PW.1, has examined six witnesses as PWs.2 to 7 amongst whom, PWs.3 to 7 are the doctors, and marked Exs.A-1 to A-200. On behalf of respondent No.2, no witnesses were examined and no documents were marked.

9. The Tribunal on issue No.1 basing on the material available on record, more particularly, Exs.A-1 and A-2 and the evidence of PW.1, held that the driver of lorry was responsible for the accident.

10. On issue No.2, the Tribunal having found that the petitioner sustained i) fracture of right femur; ii) fracture of both bones of right leg; iii) fracture of tibia of left leg; iv) cut injury of little finger with fracture of phalanx; and v) head injury, which are grievous in nature and got treated himself in Yashoda Super Specialty Hospital, Hyderabad, and as many as seven surgical interventions he had undergone followed by physiotherapy, granted Rs.2,89,962/- towards medical expenses basing on Exs.A-39 to A-166. Of course, the Tribunal has meticulously examined the medical bills and those bills,

where the amounts were refunded and adjusted, were excluded from the actual amounts paid by the petitioner and awarded the aforesaid amount, which was discussed by the Tribunal in paragraph No.12 of the order.

i) The Tribunal then noting injuries and the surgical interventions including the spells undergone by the petitioner where screws and plates were fixed in right tibia and cancellous screw was fixed to fracture upper end of left tibia and the period he had undergone treatment, granted a sum of Rs.15,000/- for fracture of femur; Rs.20,000/- for fracture of both bones of right leg; Rs.15,000/- for fracture of tibia of left leg; Rs.10,000/- for cut injury to little finger of hand with fracture of phalanx; and Rs.15,000/- for head injury, thus, totalling Rs.75,000/-. Besides the same, the Tribunal also granted Rs.10,000/- for undergoing each surgical intervention and related expenditure not covered by bills and, thus, Rs.70,000/- was granted for seven surgical interventions.

ii) On disability, the Tribunal did not accept the disability certificate issued by PW.4 showing the disability of 70%, holding that in the absence of any evidence regarding income of PW.1, the Tribunal assessed Rs.70,000/- towards 70% for his lower limbs partial permanent disability and notionally fixed the said amount. Thus, a total sum of Rs.5,04,962/- was granted as compensation with interest at 9% per annum thereon. The Tribunal has also noted that

initially, the claim was laid for grant of Rs.6,00,000/- and subsequently enhanced the claim to Rs.10,00,000/- by amending the claim petition by filing a petition which was allowed.

11. Heard Sri S. Surender Reddy, learned counsel for the appellant - petitioner, and Sri V. Sambasiva Rao, learned counsel for respondent No.2 - Insurer. Though, the present appeal was dismissed against respondent No.1, owner of the lorry, for default, the same is of no consequence in deciding the present request in view of the decision rendered by a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**¹, as respondent No.1 did not contest the case and remained *ex parte* before the Tribunal and suffered decree.

12. So far as the amount of Rs.2,89,962/- granted towards medical expenses is concerned, since it was arrived on thorough examination of every document marked as Exs.A-39 to A-166, the said amount was granted. Repeated receipts have been noted and the concessions given has also been noted and after deducting the said amount, the amount of Rs.2,89,962/- towards medical expenses was arrived at. Therefore, the same does not warrant interference.

13. Concerning the amounts awarded towards grievous injuries, award of Rs.20,000/- for fracture of both bones of right leg is on lower side as the said fracture involves both bones of right leg

¹. 2001 (1) ALD 453 (DB)

immobilizing the petitioner and making him to suffer a lot. Therefore, the same is enhanced to Rs.35,000/-. The amount of Rs.15,000/- awarded towards head injury, is enhanced to Rs.30,000/-. The other amounts of Rs.15,000/- towards fracture of right femur; Rs.15,000/- towards fracture of tibia of left leg; Rs.10,000/- towards cut injury to little finger of hand granted by the Tribunal are maintained, thus, making a total of Rs.1,05,000/- as against the amount of Rs.75,000/- granted by the Tribunal.

14. Towards pain and suffering, per surgery, it is seen a sum of Rs.10,000/- was awarded by the Tribunal, but keeping in view the nature of injuries sustained by him, the same is enhanced to Rs.15,000/- each from Rs.10,000/-, thus, making a total of Rs.1,05,000/- as against Rs.70,000/- awarded by the Tribunal towards pain and suffering.

15. So far as the disability is concerned, 70% of disability for lower limbs was notionally fixed. It appears that the Tribunal did not agree with the petitioner that he was using crutches and the evidence of PW.6, Medical Officer, who deposed that the petitioner needs crutches throughout his life having found that the petitioner was not using the same and he was using only a hand stick. This apart, the relevant details are not forthcoming. Even otherwise, a Medical Certificate issued by the Medical Board constituted at the Headquarters Hospital is not forthcoming. No doubt, on that ground

the certificate issued by PW.6 cannot be overlooked, but when the details as to how PW.6 arrived at 70% disability for the lower limbs, such as whether there has been shortening of leg, and if so, to what extent of either lower limb or what is the degree of restriction of movements so far as each part of that particular lower limb is concerned were not finding place. When such meticulous details are not forthcoming, the Tribunal was right in fixing the income notionally towards partial permanent disability of lower limbs to the extent of 70%. But, however, the amount of Rs.70,000/- awarded by the Tribunal requires modification, as it appears that even using a stick would make it clear that he has to continuously use the same. Therefore, the same is enhanced to Rs.1,00,000/- from Rs.70,000/-.

16. So far as the income of petitioner is concerned, the Tribunal has rightly observed that there is no income proof filed by him. It is no doubt true, the learned counsel for the petitioner contended that the documentary evidence has been filed, but perusal of the documents exhibited on behalf of the petitioner would show that he has filed pahanies for two years, which are marked as Exs.A-171 and A-172, but he has not let in any evidence as regards the quantum of produce he was deriving and whether he was selling it in open market and getting it processed through Agriculture Market Committee and other relevant details. In the absence of the same, the

observations made by the Tribunal that there is no income proof, cannot be faulted.

17. Admittedly, the petitioner has undergone surgical interventions at Yashoda Super Specialty Hospital, Hyderabad and Chandana Hospital. Certainly, he would have incurred considerable amount towards transport charges. Therefore, a sum of Rs.25,000/- is granted though, there are no bills produced, as the very fact that he had undergone seven surgical interventions indicate that he would have made sufficient number of trips to Hyderabad by some sort of conveyance. This apart, the petitioner is also entitled to attendant charges for a period of one year at the rate of Rs.1500/- per month and, accordingly, a sum of Rs.18,000/- is awarded. Nothing was granted towards extra nourishment by the Tribunal and, therefore, a sum of Rs.35,000/- is granted under the said head.

18. Thus, in all, the petitioner is entitled to Rs.6,77,962/- as compensation as against the amount of Rs.5,04,962/- awarded by the Tribunal.

19. Concerning the rate of interest, the Tribunal granted 9% per annum. The same is confirmed on the amount awarded by it, but, however, on the enhanced amount of Rs.1,73,000/-, the interest at the rate of 7.5% per annum is granted in view of the decision of the

Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**².

20. Thus, the appeal is allowed in part, and the order and decree, dated 30.09.2004, passed by the Tribunal in O.P. No.275 of 2001 are modified enhancing the compensation to Rs.6,77,962/- (Rupees six lakhs seventy seven thousand nine hundred and sixty two) from Rs.5,04,962/- with interest at 9% per annum on the amount of Rs.5,04,962/- awarded by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.1,73,000/- (Rupees one lakh seventy three thousand) from the date of petition till the date of realization. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in this appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 16, 2017.

Mgr

². 2013 ACJ 1403