

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1401 OF 2004

JUDGMENT:

The present Appeal is preferred by the appellant herein under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), seeking enhancement of compensation on the ground that the amount of Rs.1,34,670/- awarded by the Chairman, Motor Accidents Claims Tribunal - cum - IV Additional Chief Judge, City Civil Court, Hyderabad (for short 'Tribunal') with interest at 9% per annum thereon for the injuries sustained by him was grossly inadequate.

2. By the order, dated 06.01.2004, in O.P. No.2742 of 2002, the Tribunal awarded the aforesaid amount under different heads as against the claim laid under Section 166 read with 140 of the Act for grant of Rs.4,00,000/-.

3. The appellant herein is the petitioner in the aforesaid O.P., while respondent Nos.1 and 2, who are owner and insurer of Scooter bearing registration No.AP 12A 2128, are respondents as such.

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

5. Heard Sri M. Krishna Reddy, learned counsel for the appellant - petitioner. No representation for respondent No.2 - Insurer. It is no doubt true, service was not completed on respondent

No.1, but respondent No.1 - owner of the vehicle remained *ex parte* before the Tribunal and suffered decree passed by the Tribunal. Therefore, the presence of respondent No.1 is immaterial in deciding the request in the present appeal.

6. The submissions made by the learned counsel for the petitioner are that; first, the Tribunal has not assigned any reasons in discarding the medical expenses of Rs.1,26,933.76paise under Ex.A-7 issued by NIMS Hospital including future operation, except on the premise that none of the personnel from NIMS Hospital was summoned and examined; second, though, the petitioner was undergoing treatment as in-patient and unable to pursue his regular activities for a period of six months having been on bed, the Tribunal went wrong in taking only three months income towards temporary loss of earnings. The learned counsel's submission is that, though, the petitioner sustained permanent disability on the ground that the Medical Officer was not examined, the Tribunal has not applied structural formula for determination of loss of earning capacity.

7. Now, turning to the injuries sustained by the petitioner, as per Ex.A-3, he sustained fracture of right femur, Grade-I compound fracture of both bones right leg and abrasion on the right foot. It appears he was also treated in Sri Sairam Hospital, as Ex.A-4 would reflect the same, and he was treated in NIMS Hospital having been admitted on 10.10.2001, operated on 25.10.2001 and again operated

on 02.01.2001 and discharged and again on 19.11.2001 as could be seen from Exs.A-5, A-6 and A-12. These have been noted by the Tribunal under issue No.2. The Tribunal awarded Rs.75,000/- for the fracture injuries sustained by the petitioner; Rs.10,000/- towards pain and suffering and another sum of Rs.10,000/- towards loss of amenities. The Tribunal awarded Rs.25,000/- as against Rs.1,26,933.76paise based on Ex.A-7 bunch of medical bills for the reason aforementioned, and granted Rs.14,670/- towards loss of three months income as could be gathered from pay-slips marked as Exs.A-9 and A-10 as the petitioner was working in Rane Engine Valves Limited as Machine Operator during the period of incident. The finding recorded by the Tribunal in not accepting the permanent disability cannot be faulted for the reason that the Medical Officer was not examined and no permanent disability certificate is forthcoming.

8. Be that as it may, the amount of Rs.75,000/- granted by the Tribunal for fracture injuries appears to be reasonable. The amount of Rs.10,000/- towards pain and suffering, in the circumstances, requires enhancement and, therefore, the same is enhanced to Rs.25,000/-. The amount of Rs.10,000/- granted by the Tribunal towards loss of amenities, since the same is on correct lines, and it does not require any enhancement and, accordingly, the same is maintained. The Tribunal has granted Rs.25,000/- towards medical expenses, but in

arriving at so, it has not assigned any cogent reasons, and it is no doubt true the official from NIMS Hospital was not examined to prove Ex.A-7 bunch of medical bills. But, merely on that ground, it cannot be disputed that the petitioner did not incur that much amount or major part of that amount excluding future operation charges. Be that as it may, when the Tribunal was accepting Ex.A-5, which is discharge summary basing on which alone, the amount of Rs.75,000/- was granted, certainly, the Tribunal ought not to have rejected Ex.A-7 bunch of medical bills. Therefore, the said amount is granted adjusting Rs.25,000/- already granted by the Tribunal.

9. Concerning three months temporary loss of earnings, it is enhanced to twice the amount granted by the Tribunal treating that the petitioner was unable to attend the employment at least for a period of six months. Thus, the petitioner is additionally granted a sum of Rs.1,31,604/- [i.e.,Rs.1,01,934 (Rs.1,26,934 - Rs.25,000/-) + 15,000 (Rs.10,000 + Rs.15,000/-) +14,670/-] apart from the amount that was granted by the Tribunal. In view of the aforesaid discussion, the petitioner is totally entitled to Rs.2,66,274/- [Rs.1,31,604 + Rs.1,34,670/-] as the compensation as against the amount of Rs.1,34,670/- awarded by the Tribunal.

10. Concerning the rate of interest, the Tribunal granted it at 9% per annum by the Tribunal on Rs.1,34,670/- and the same is confirmed. But, however, on the enhanced amount of Rs.1,31,604/-,

he is entitled to interest at 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

11. Thus, the appeal is allowed in part, and the order and decree, dated 06.01.2004, passed by the Tribunal in O.P. No.2742 of 2002 are modified enhancing the compensation to Rs.2,66,274/- (Rupees two lakhs sixty six thousand two hundred and seventy four) from Rs.1,34,670/- with interest at 9% per annum on the amount of Rs.1,34,670/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.1,31,604/- (Rupees one lakh thirty one thousand six hundred and four) from the date of petition till date of realization. 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 11, 2017.

Mgr

¹. 2013 ACJ 1403