

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1402 OF 2004

JUDGMENT:

Dissatisfied with the award of Rs.45,420/-, by order and decree, dated 24.11.2003, in O.P. No.296 of 2000, passed by the Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Karimnagar (for short 'Tribunal') as against the claim of Rs.3,00,000/- laid under Section 166 (1)(a) of the Motor Vehicles Act, 1988 (for short 'Act') by the petitioner for the injuries he sustained in a road accident, seeking enhancement, he preferred the present appeal under Section 173 of the Act.

2. The appellant herein is the petitioner in O.P. No.296 of 2000, while respondent Nos.1 to 3, who are driver, owner and insurer of Lorry bearing No.APO 1783, respectively, are arrayed as such.

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

4. Heard Sri K. Jagadishwar Reddy, learned counsel for the appellant - petitioner, and Sri Srinivasa Rao Vutla, learned standing counsel for respondent No.3 - Insurer. Despite service of notice on respondent No.1, driver of the vehicle, none appears for him. The present appeal stood dismissed against respondent No.2, owner of the lorry, on 19.11.2015 for default and it makes no difference in deciding

the controversy herein for the reason he suffered decree passed by the Tribunal having remained *ex parte*.

5. Now, the short point that arises for consideration in the present appeal is:

Whether the compensation granted by the Tribunal is just and adequate? If not, to what amount the petitioner is entitled?

6. The petitioner was working in Singareni Collieries as Trammer. He sustained two injuries in the accident that occurred on 19.09.1996, viz., a lacerated wound 6" x 1½" x bone deep, and another lacerated wound 5" x 1½" x bone deep on his fore-head. But, the second injury was fracture of frontal bone, which was grievous in nature. He was initially admitted in Area Hospital, Singareni Collieries Company Limited, Godavarikhani, and he was referred to Osmania General Hospital, Hyderabad, on 20.09.1996 as in-patient and he has undergone surgical intervention in Osmania General Hospital and discharged on 01.10.1996 having been treated by Neuro Surgery Unit-II and, thereafter, he was once again admitted on 03.10.1996 and discharged on 09.10.1996 after further treatment. The Tribunal basing on the evidence on record, both, oral and documentary, let in by the petitioner, awarded Rs.5,000/- towards extra nourishment; Rs.15,000/- towards pain and suffering; Rs.10,000/- towards the probable loss suffered by him in his office as he was removed from the post of Trammer and provided with

alternative job as General Mazdoor and a sum of Rs.15,420/ towards loss of salary for four months and, thus, a total sum of Rs.45,420/- was granted with interest at 9% per annum thereon.

7. The learned counsel for the petitioner would submit that there has been variation in the pay received after the accident on account of change in the job and that the difference was not taken note of by the Tribunal and, therefore, to grant balance amount.

8. Per contra, the learned standing counsel for respondent No.3 - Insurer would submit that there was no loss of employment and the amount awarded by the Tribunal was based on material on record and the petitioner is not entitled to any enhancement.

9. At the outset, it is to be stated that in case there has been any change in the post and his salary was not protected, the remedy available to the petitioner was elsewhere but not by way of award of compensation except under the heads that are provided under the provisions of the Act. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, would cover the situation in case he suffered any loss on account of change in the post or the post he was hitherto held. Therefore, the evidence of PW.2 is not of much consequence to make good the loss, if any, on account of change in the post of PW.1.

10. Now, turning to the amounts awarded by the Tribunal, by any stretch of imagination, the amount of Rs.15,000/- granted towards pain and suffering is far below. As mentioned hereinbefore, the discharge card Ex.A-9 would show that the petitioner was admitted in Neuro Surgery Unit-II in Osmania General Hospital, Hyderabad, on 20.09.1996 and discharged on 01.10.1996, and again he was admitted on 03.10.1996 and discharged on 09.10.1996 after further treatment. Keeping in view, the second injury sustained by him, which was fracture of frontal bone, the amount of Rs.15,000/- is enhanced to Rs.50,000/- under the said head. Towards extra nourishment, a sum of Rs.10,000/- is granted as against Rs.5,000/- awarded by the Tribunal. The Tribunal granted a sum of Rs.15,420/- towards temporary loss of earnings at Rs.3,855/- for four months and the same is maintained. Towards probable loss suffered by the petitioner in his office if taken into consideration as observed in paragraph No.10 by the Tribunal, requires enhancement and, therefore, it is enhanced to Rs.25,000/- as against Rs.10,000/- awarded by the Tribunal. The petitioner is also entitled to Rs.5,000/- towards transport charges as he had undergone treatment in Osmania General Hospital, Hyderabad and had to travel from his place to Osmania General Hospital for review even. Towards attendant charges, a sum of Rs.8,000/- is awarded. Thus, in all, the petitioner is entitled to Rs.1,13,420/- (Rupees one lakh thirteen thousand four hundred and twenty) as against Rs.45,420/- awarded by the Tribunal.

11. Concerning rate of interest, the Tribunal has 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 from the date of petition till the date of realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

12. In the result, the appeal is allowed in part, and the order and decree, dated 24-11-2003, in O.P. No.296 of 2000, passed by the Tribunal, are modified, enhancing the compensation to Rs.1,13,420/- (Rupees one lakh thirteen thousand four hundred and twenty) from Rs.45,420/- with interest at the rate of 9% per annum on the amount of Rs.45,420/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.68,000/- from the date of petition till the date of realization, and in all other respects, the order and decree are confirmed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

September 07, 2017
Mgr

A. SHANKAR NARAYANA, J

¹. 2013 ACJ 1403