

**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO****M.A.C.M.A.No.647 OF 2015****JUDGMENT:**

This appeal is filed under Section 173 of the Motor Vehicles Act aggrieved by the order passed in O.P.No.714 of 2011 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge), Nizamabad (for short "the Tribunal").

2. For the sake of convenience, the parties will be hereinafter referred to as arrayed before the Tribunal.

3. Brief facts of the case are that the petitioner filed a petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.2,00,000/-, for the injuries sustained by him in the motor accident. It is stated that on 30.03.2011, the petitioner was travelling in an auto along with his wife and others and at about 6.40 pm, when they reached near poultry farm in Ugrawai village, the auto being driven in a rash and negligent manner, dashed against unknown trolley auto, resulted in injuries to the petitioner and he sustained fracture right humerus, fracture right leg knee and injuries to hands, legs and other parts of the body. Later, the police of Devanpally registered a case in crime No.82 of 2011 under Section 337 I.P.C. The petitioner was shifted to Government Hospital, Kamareddy, and from there to Shashank Hospital, Nizamabad,

wherein he was treated as an inpatient and underwent operations. On account of injuries, the petitioner got permanent disability and became dependent on others.

4. To prove his case, the petitioner on his behalf got examined PWs.1 to 3, and marked Ex.A1 to A14. On behalf of respondent No.2 RW.1 was examined and got marked Exs.B1 to B7.

5. On appreciating the evidence on record, the Tribunal found that though the petitioner is entitled to Rs.3,55,800/-, as he restricted his claim to Rs.2,00,000/-, the Tribunal awarded Rs.2,00,000/- as compensation to him, directing the respondent Nos.1 and 3 only to pay the same and dismissed the O.P. against the respondent No.2. Questioning the liability and quantum, the present appeal has been filed by the petitioner.

6. Heard both sides. Perused the record.

7. Learned Counsel for the petitioner contended that the Tribunal erroneously fixed the liability on respondent Nos.1 and 3 only by exonerating the 2<sup>nd</sup> respondent/Insurance Company, and he relied upon the decision rendered in the case of ***National Insurance Company Limited vs. Swaran Singh and others***<sup>1</sup>, wherein it was held that the Insurance Company is liable to satisfy the award in

---

<sup>1</sup> 2004 ACJ 1

favour of the third party at the first instance and then to recover the awarded amount from the owner or driver of the vehicle even where the Insurance Company could establish a breach of terms of the policy on the part of the owner of the vehicle.

8. Per contra, the learned counsel for the respondents would submit that as per the judgment of **Swaran Singh** (*supra*), in the usual course, pay and recovery will be granted by the Courts, but he has raised the objection with regard to the amount awarded under the head Pain, suffering and trauma at Rs.60,000/- whereas the Medical expenses are only at Rs.7,800/-. Generally, pain and suffering will be a lesser amount than the medical bills.

9. It is observed by this Court that the Tribunal awarded excessive compensation under the head Pain and Suffering and also disability observing that PW.3 did not say the percentage of disability for the whole body or the limb. The Tribunal further observed that he did not say that the petitioner lost total earning capacity. As such, the Tribunal awarded Rs.2,50,000/- under the head of disability. However, the same is without any justification and is liable to be altered. The Tribunal further restricted itself in awarding Rs.2,00,000/- only with the observation that the claim of the petitioner was confined to Rs.2,00,000/-. It is to be noted that there would be no irregularity in awarding the enhanced compensation

amount as against the claimed amount as it is well-settled law that the awarded amount can be enhanced more than that of the claim as per the principle of 'Just Compensation'. However, the appellant is bound to deposit the deficit court fee upon the enhanced amount.

10. As such, this Court is of the considered view in granting compensation to the petitioner as against the compensation amount granted by the Tribunal as follows:

| <b>Head</b>                                             | <b>Amount awarded by Tribunal</b>                        | <b>Amount reduced/enhanced by this Court</b>           |
|---------------------------------------------------------|----------------------------------------------------------|--------------------------------------------------------|
| Pain and suffering                                      | Rs.60,000/-                                              | Rs. 30,000/-                                           |
| Medical expenses                                        | Rs.7,800/-                                               | Rs.7,800/-                                             |
| Transportation, Extra nourishment and attendant charges | Rs.18,000/-                                              | Rs.18,000/-                                            |
| Loss of earnings                                        | Rs.20,000/-                                              | Rs. 20,000/-                                           |
| Disability                                              | Rs.2,50,000/-                                            | Rs.2,00,000/-                                          |
| Total                                                   | Rs.3,55,800/-<br><b>(But awarded only Rs.2,00,000/-)</b> | Rs.2,75,800/-<br><b>(Rounded off to Rs.2,76,000/-)</b> |

11. The main grievance of the petitioner is with respect to the exoneration of respondent No.2/Insurance Company from the liability. In view of the ratio laid down in **Swaran Singh** (*supra*), this Court is inclined to fix the liability on respondent No.2/Insurance Company as

well with a liberty to recover the amount from the respondent Nos.1 and 3.

12. In the result, the appeal is allowed by setting aside the order against respondent No.2 in M.V.O.P.No.714 of 2011, dated 24.02.2015 passed by the Tribunal and enhancing the compensation amount from Rs.2,00,000/- to Rs.2,76,000 /- (Rupees Two Lakh and Seventy Six Thousand Only) with interest @ 7.5% p.a. from the date of petition till the date of realization. Respondent No.2 is directed to deposit the above said amount with interest and costs within one month from the date of receipt of a certified copy of this judgment. It is open for respondent No.2, to recover the above said amount from respondents Nos.1 and 3. The petitioner is directed to pay the deficit Court fee on the enhanced compensation amount within one month from the date of receipt of a copy of this judgment. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

---

**NAMAVARAPU RAJESHWAR RAO, J**

**21<sup>st</sup> day of February, 2023**  
PNS