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**IN THE COURT OF THE CHAIRMAN(M.A.C.T.) III ADDL. DISTRICT
JUDGE, ASIFABAD**

**PRESENT: K.VENKATESWARLU
CHAIRMAN - CUM-III ADDITIONAL
DISTRICT JUDGE, (M.A.C.T.) ASIFABAD.**

THURSDAY THIS THE 8th DAY OF FEBRUARY 2018.

O.P.No.1/2017

Between:

Enagandhula Rakesh, S/o. Mallesh, Age: 22 years,
Occ: Proclainer Operator, R/o. H.No: 2-35 Paidi Chintalapalli,
Mdl: Dharmaram, Dist: Karimnagar, Presently residing at
C/o. Rajesh, S/o. Lingaiah, R/o. Manikanta Nagar, Asifabad,
Dist: Kumrambheem Asifabad.

...Petitioner

//AND//

1. Sayyad Minaz, S/o. Gyasuddin, Age: 45 years,
Occ: Driver of the Mahindra Pick van, R/o. Gadchandur,
Tq: Korpana, Dist: Chandrapur. Presently residing at
Shastri Nagar, Tq: Vani, Dist: Yavatmal(MS)

2. Rajulla Khan, S/o. Ahmed Khan, Age: 47 years,
Occ: Owner of the Mahindra Pick van, R/o. Momenpura,
Tq: Wani, Dist: Yavatmal(MS)

3. The Branch Manger,
Reliance General Insurance Company,
Post: Yavatmal(MS)

...Respondents

This petition coming upon before me for final hearing on 22-1-2018 in the presence of Sri.Shamboo Amte and R. Ravindar, Advocates for the petitioner; Sri. B. Sathish Babu, Advocate for R1 & R2 and Sri. J. Shyam Kumar, Advocate for R3, after hearing both sides and perusing the material on record till this day, this court delivered the following:-

:: J U D G M E N T ::

1. This is a petition filed by an injured U/s.166 (1) of MV Act, 1988, hereinafter referred to as, the Act, claiming compensation of Rs.14,20,955/- for the injuries sustained by him in a road accident. Petition is filed against driver, owner and insurer of Mahindra pick van, that was involved in the accident.

2. The case of petitioner is that he is aged 25 years at the time of accident, working as proclainer operator and earning Rs.30,000/- p.m., that on 18-05-2016 at about 9.30 p.m., when he was proceeding on motor cycle bearing No.TS-02-EC-9651, when it reached at ourt skirts of Wankidi, a Mahindra pick van bearing No. MH-29-AT-0397 came there driven in a rash and negligent manner with high speed and dashed against his motor cycle, as a result he sustained multiple injuries all over body, that immediately he was taken to Government Hospital, Asifabad, that after first aid he was taken to Abishek Hospital, Karimnagar, that for better treatment he was shifted to Global hospital Lakadikapool, Hyderabad where he was treated as inpatient from 20-5-2016 to 31.5.2016, that doctor conducted 2 surgeries on him, that later he was shifted to Seha Hospital, Lakadikapool, where he was treated as inpatient from 31-5-2016 to 2-6-2016, that in the month on July due to infection in the surgery spot he was admitted in Aditya Hospital, Karimnagar, where he was treated as inpatient for a period of 9 days, that due to non control of infection again he was shifted to Global Hospital, Lakadikapool at Hyderabad, where he was treated as inpatient for a period of 3 days and undergone 1 surgery, that due to fractures and injuries he suffered pain and agony and still feeling acute pain, that due to injuries he could not attend to work and claimed Rs.14,20,955/- as total compensation.

3. R1 & R2 filed common counter stating that accident was caused due to rash negligent riding of motor cycle by the petitioner, that there was no fault on the part of R1 in the accident, that the vehicle is insured with R3, as such R1 & R2 are not liable to pay any compensation to the petitioner.

4. R3 filed counter stating that petitioner has to prove the manner of accident, his age, occupation and loss of income, that R1 has no valid driving license and

there by violated terms and conditions of insurance policy, as such R3 is not liable to pay any compensation. It is further pleaded that quantum of compensation claimed by petitioner is excessive.

5. Based on the aforesaid pleadings the following issues are settled for trial:

- i. Whether Petitioner sustained injuries in the accident that occurred on 18.05.2016 at about 9.30 p.m., at out skirts of Wankidi village?
- ii. Whether the said accident was caused due to rash and negligent driving of Mahindra pick van bearing MH-29-AT-0397?
- iii. Whether the petitioner is entitled to claim compensation if so, how much and against whom of the respondents ?
- iv. To what relief?

6. During trial petitioner is examined as PW-1, a Orthopedic Surgeon and RMO of Global Hospital, Lakadikapool at Hyderabad are examined as PWs-2 and 3 respectively. Exs: A1 to A20 are exhibited on behalf of petitioner. Ex. B1 is exhibited by consent on behalf of R3, but no oral evidence is adduced on behalf of R3.

7. Heard both sides.

8. **Issue Nos.i & ii:** PW- 1 filed affidavit repeating the averments mentioned in the petition, stating that due to rash and negligent driving of Mahindra pick van by R1 accident occurred. In the cross examination it is elicited that accident took place on the road between Wankidi and Asifabad, at a distance of 2 KM from Wankidi, that it was at 9.30 p.m., that there were no street lights at the place of

accident. Nothing is elicited in his cross examination to discredit testimony of PW1 about manner of accident. No evidence is adduced to contradict the version given by PW1 on that aspect. As such the evidence of PW1 stands unchallenged. Police record i.e., Ex. A1 shows that on the report given to police FIR was registered against driver of Mahindra pick van. Ex.A2 shows that after investigation charge sheet laid against him. So, it is clear that police record also corroborates the version of PW-1. It is clear from the material on record that accident occurred due to rash and negligent driving of Mahindra pick van. Ex. A10 shows that petitioner sustained injury to the head and other parts of the body. Hence both the issues are held in the affirmative.

9. **Issue No.iii:** Ex.A10 shows that petitioner sustained injury to the head and other parts of the body. He was treated in Government Hospital and Global Hospital, Lakadikapool at Hyderabad and some other hospitals where he was treated as inpatient. Considering the nature of injuries sustained by petitioner and treatment taken by him in Global Hospital and other hospitals as inpatient for number of days, where doctors conducted several tests and surgeries on him, he must have suffered lot of pain and agony due to said injuries, for which he can be awarded a sum of **Rs.75,000/-**. Petitioner filed Exs. A5 to A9 and A13 to A15 bills for total sum of Rs.7,94,304/- towards medical expenses. PW-2 is examined who proved Ex.A6 for a sum of Rs.5,14,916./-. None is examined to prove bills under Exs. A5, A7 to A9, A13 to A15. Considering the fact that the bills under Exs. A5, A7 to A9, A13 to A15 are for small amounts petitioner cannot be excepted to examine all of them. So he can be awarded the amounts mentioned in Exs. A5 to A9, A13 to A15 aggregating to **Rs.7,94,304/-** towards medical expenses incurred by him.

10. Petitioner filed Ex.A18 which is an estimate for future expenses to a tune of Rs.3,07,500/-. PW-3 is examined to prove the same. He deposed that petitioner requires further treatment, that he is not able to bear full weight on the right leg while walking, that he has to use wheel chair or walker for ambulation, that he cannot do any physical work, that he requires surgery to the right leg in 3 stages and it may require 6 months to 1 year or more for complete healing of treatment and could not give percentage of disability since entire treatment is not over. He deposed that the future treatment may costs Rs.8 to 10 laks. In the cross examination he admitted that the general condition and status of right leg is improved very much and fractures are still healing, that in case fractures heal from present position it is sufficient if implants are removed from the leg. It means the requirement future surgery is only contingent i.e., if fractures are not healed properly. As such no amount can be awarded for it now. If the petitioner needs further surgery and incurs huge expenditure he can file a fresh petition with that evidence and claim the said amount. For the present **Rs.30,000/-** is awarded towards removal of implants.

11. Petitioner filed Ex.A17 ambulance bill for Rs.63,000/-. Considering the fact that petitioner approached number of hospitals, though none is examined to prove them he can be awarded **Rs.40,000/-** towards transportation expenses. He must have been prevented from attending to work for some time during which he must have lost income. According to PW-3 petitioner is not in a position to bear weight on right leg and cannot do any physical work now. She could not give the percentage of disability since total treatment is not over. It cannot be said that petitioner became disabled either temporarily or permanently. So nothing can be awarded to the petitioner towards disability. But considering the fact that

according to PW-3 petitioner is not able to do any work now and that further treatment or healing requires some time, petitioner can be granted loss of income from the date of accident till now and for 1 year here after. Petitioner claimed to be earning Rs.30,000/-p.m., by owning and operating Proclainer. He filed Ex.A19 to show that petitioner sold away proclainer on 11-12-2015. There is no evidence to show that petitioner was operating it. As such his claim about income as operator of proclainer cannot be accepted. In the absence of any evidence it has to be assessed that income of petitioner is equal to that of daily wage earner who must be earning Rs.4,000/-p.m., during the period of accident in 2016. Accident took place on 18-5-2016. By now 18 months have lapsed and if 12 more months are added it comes to 30 months. For 30 months he must have lost **Rs.1,20,000/-**. So he is entitled to the said amount towards loss of income.

12. The total amount to which the petitioner is entitled comes to Rs.10,59,304/- which is rounded to **Rs.10,59,500/-**. R1 being driver, R2 being owner and R3 being insurer of Mahindra pick van that caused the accident, they are jointly and severally liable to pay the same to petitioner and issue No.3 is held accordingly.

13. **Issue No.iv:** In the result petition is allowed in part with costs, awarding a sum of **Rs.10,59,500/-** (Rupees Ten lakhs fifty nine thousand and five hundred only) with interest at 9% p.a., on the said amount from the date of petition till realization, against R1 to R3 jointly and severally, as compensation to the petitioner for injuries sustained by him in the road accident. Petitioner is entitled to withdraw total compensation awarded to him. Advocate fee is fixed at Rs.15,000/-. Petitioner is entitled to file another petition if he incurs expenses for future treatment beyond Rs.30,000/- awarded in this petition after completion

of the future treatment. If he is able to establish any disability after the said treatment he is entitled to claim the same in that petition after completion of the future treatment.

Typed to dictation to steno, corrected and pronounced by me in open court on this 8th day of February, 2018.

**CHAIRMAN(M.A.C.T.)
III ADDL. DISTRICT JUDGE, ASIFABAD**

**APPENDIX OF EVIDENCE
WITNESSES EXAMINED**

For Petitioner:

PW-1: E. Rakesh
PW2: Dr. N. Sridevi
PW-3: Dr. Chandra Bhushan

For Respondents:

NONE

EXHIBITS MARKED

For Petitioner:

Ex.A1: Certified copy of FIR
Ex.A2: Certified copy of Charge Sheet
Ex.A3: Certified copy of Rough sketch
Ex.A4: Certified copy of Crime detail form
Ex.A5: Bunch of Abishek Hospital, Karimnagar bills Rs. 66,230/-
Ex.A6: Global Hospital Hyderabad, Bills Rs. 5,14,916/-
Ex.A7: Sneha Hospital Hyderabad, Bills Rs. 60,725/-
Ex.A8: Aditya care Hospital Karimnagar, Bills Rs. 32,480/-
Ex.A9: Bunch of other medical bills for Rs.18,566/-
Ex.A10: Injury certificate
Ex.A11: Discharge summary seha Hospital, Hyderabad
Ex.A12: Discharge summary Adithya Hospital, Karimnagar
Ex.A13: Medical bills, Karimnagar for Rs.9,730/-
Ex.A14: Medical bills, Karimnagar for Rs.25,303/-
Ex.A15: Medical bills, Hyderabad for Rs.66,354/-
Ex.A16: X-rays (9)
Ex.A17: Ambulance bills Rs. 63,000/-
Ex. A18: Estmation for future treatment Rs. 3,07,500/-
Ex.A19: Xerox copy of sale deed
Ex. A20: Photo of petitioner (2)

For Respondents:

NIL

Ex. B1: Policy copy of Reliance General Insurance
(Ex. B1 is exhibited by consent)

**CHAIRMAN(M.A.C.T.)
III ADDL. DISTRICT JUDGE, ASIFABAD**