

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.562 OF 2006

JUDGMENT:

Dissatisfied with the award of Rs.1,68,000/- granted by the Tribunal towards compensation for the injuries sustained by the petitioner, the instant appeal is preferred seeking enhancement. The Tribunal by the order dated 05.11.2005 in O.P.No.287 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - V Additional District Judge (Fast Track Court) at L.B.Nagar, granted the said amount, as against the claim of Rs.2,00,000/-.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

3. The facts in brief are that on intervening night of 16/17.02.2003, while the petitioner was proceeding in an auto bearing No.AP28U-1424 from Patancheru to Shanthinagar and when it reached H.I.G.Gate on N.H.No.9, Ashoknagar, a maruthi car bearing No.AP28R-9175 driven by its driver at high speed in a rash and negligent manner came extreme side and hit the auto at about 2.30 a.m. due to which, the auto fell on the road and the petitioner sustained injuries. The driver of the car admitted him in Anitha Nursing Home at Chandanagar. He stated that he got himself shifted to Super Speciality Hospital and was treated from 18.02.2003 to 26.02.2003 and his leg was operated. According to him, he was undergoing treatment on the date when the instant petition was made and his injuries had serious effect on his health and in attending his daily needs. Therefore, he sought for Rs.2,00,000/- as compensation against respondents 1 and 2, who are the owner and insurer of the maruthi car.

4. First respondent filed counter, while denying the material allegations mentioned in the petition attributing rash and negligent driving to the petitioner himself.

5. Second respondent, insurer, filed counter opposing the claim.

6. The Tribunal has framed three issues in order to fix the responsibility for the accident. During enquiry, the petitioner was examined as PW.1, one Bujji Babu was examined as PW.2 and Exs.A-1 to A-9 were marked. On behalf of the respondents, no witnesses were examined, but the copy of insurance policy was marked as Ex.B1 on consent.

7. The Tribunal, on appraisal of evidence, held on issue No.1 that due to rash and negligent driving of the car driver, the accident has occurred. On issue No.2, the Tribunal based on the evidence of P.W.2, but, however, not agreeing with 40% partial permanent disability spoken to by P.W.2 since it was not reflected in Ex.A9 or in Ex.A10 reduced the disability to 30% and taken the earnings at Rs.1500/- per month, which works out to Rs.18,000/- per annum and the age of the petitioner as 37 years on the date of accident, applied multiplier '16' and after deducting 1/3rd arrived at Rs.86,400/- towards loss of earning capacity and placing reliance on the decision of Hon'ble Supreme Court in **NEW INDIA ASSURANCE CO.LTD., v. CHARLIE AND ANOTHER** deducted 1/3rd there from, thus arrived at Rs.57,600/- and rounded off it to Rs.58,000/-. Besides the same, Tribunal has also awarded a sum of Rs.7,500/- towards temporary loss of earnings, Rs.20,000/- towards the injury which was compound fracture of both bones of right leg including for pain, suffering, mental agony, inconvenience suffered by the petitioner, Rs.1,000/- towards attendant charges, Rs.1,000/- towards transport expenses and Rs.3,500/- towards extra nourishment. Thus, a total sum of Rs.1,68,000/- with interest at 7.5% per annum from the date of petition till realisation, was granted towards compensation.

8. Aggrieved of the above order, the instant appeal is preferred by the claimant contending in the grounds of appeal that the Tribunal did not appreciate the evidence of P.W.2 and medical evidence under Exs.A9 and A10 and not assigned any reason as to why 30% disability was taken as against 40% disability and, therefore, sought to grant the balance amount.

9. Heard Sri B.Parameswara Rao, learned counsel for the claimant (appellant). Despite service of notices on respondents 1 and 2, none appears for the first respondent owner and the second respondent insurer.

10. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioner.

11. It is no doubt true, the Tribunal fixed 30% towards partial permanent disability as against 40% spoken to by P.W.2 though it has come up in the evidence of P.W.2 'there was shortening of one inch of right leg'. But, surprisingly, neither Ex.A6, nor Ex.A9 nor Ex.A10 would reflect the shortening of petitioner's leg by one inch. In such an event, considering 30% disability as against 40% partial permanent disability spoken to by P.W.2 without there being any disability certificate issued cannot be faulted with. However, so far as deduction of 1/3rd in the loss of future earning capacity determined by the Tribunal is concerned, the same appears to be not in consonance with the well settled principles of law.

12. Further, the age of the petitioner was 37 years on the date of accident and the Tribunal has applied multiplier '16', but in view of the decision of the Hon'ble Apex Court in **SARLA VERMA v. DELHI TRANSPORT CORPORATION**, the relevant multiplier is '15', which works out to Rs.81,000/-. So far as the other amounts granted by the Tribunal are concerned, an amount of Rs.7,500/- towards temporary loss of earnings for five months, Rs.20,000/- for compound fracture of both bones of right leg including pain and suffering, mental agony, inconvenience and discomfort and Rs.77,000/- towards treatment and medicines are confirmed. Towards attendant charges and

transport charges, the Tribunal has granted Rs.1,000/- each but the petitioner is entitled to Rs.5,000/- put together and towards extra nourishment, the petitioner is entitled to Rs.5,000/- as against Rs.3,500/- granted by the Tribunal. Thus, the petitioner is totally entitled to Rs.1,91,000/- with interest at 7.5% per annum on the said amount.

13. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation from Rs.1,68,000/- to Rs.1,91,000/- as stated supra. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

March 31, 2015.

Rns