

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.2443 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.27,000/- towards compensation as against the claim of Rs.1,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 read with

Section 455 of the A.P. Motor Vehicle Rules, 1989, seeking enhancement of the same, petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 04-06-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - IX Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, in O.P. No.235 of 2001.

2. The appellant herein is the petitioner (claimant) in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of maruthi van bearing No.AP-9729, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that the petitioner was working as principal of a private school called Little Angles High School at Kukatpally, Hyderabad. On 06-01-2001, while she was proceeding as a pillion rider on kinetic Honda bearing No.AP-28-7553 being driven by her husband from her house to Secunderabad, near Huda Park at Kukatpally, at about 11-15 a.m., a Maruthi Van bearing No.AP-9729, dashed their kinetic Honda, due to which, herself and her husband sustained injuries and she was immediately admitted in Gandhi Hospital and later she joined a private hospital for treatment.

She stated that she was drawing a salary of Rs.10,000/- per month as principal of a private school and due to the fractures she sustained, she suffered permanent disability and she could not attend to her normal duties, and, therefore, sought Rs.1,00,000/- towards compensation.

5. Respondent Nos.1 and 2 filed separate counters opposing the claim. Respondent No.1 states that his brother Kishore D Patil paid Rs.1,737/- towards full and final settlement of the medical bills at Sri Vidya Bone Joint Arthritis and Rehabilitation Clinic and sought to dismiss the claim against him stating that respondent No.2, insurer of the van, is liable to pay the compensation, if any, as there is valid coverage of insurance policy to the van.

6. Respondent No.2, while opposing the claim,

required the petitioner to prove the permanent disability sustained by her and the various pleas taken by her in the claim petition.

7. The Tribunal framed three (3) issues in the direction of fixing responsibility for the accident. During enquiry, the petitioner examined herself as PW.1 besides examining Dr. S. Venkataramana as PW.2 and marked Exs.A-1 to A-7. On behalf of the respondents, no witnesses were examined, but, a copy of the insurance policy of the van involved in the accident is marked as Ex.B-1 on consent.

8. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioner observing that the accident occurred due to rash and negligent driving of the Maruthi Van.

9. On issue No.2, taking into consideration the contents of Ex.A-2 - discharge card, which shows that the petitioner sustained fracture of colles and scaphoid below elbow and she was admitted on 06-01-2001 and discharged on 07-01-2001 by applying plaster of paris (POP) and she was treated conservatively, as revealed from the evidence of PW.2, and disbelieving Ex.A-4 disability certificate issued by PW.2, on the ground that there is no elaboration as to how the percentage of disability was arrived at by PW.2, awarded a sum of

Rs.10,000/- towards pain and suffering, Rs.10,000/- towards loss of income, Rs.5,000/- towards extra-nourishment and Rs.2,000/- towards medicines.

10. It is the aforesaid order, which is under challenge by the petitioner in the instant appeal contending in the grounds of appeal that the Tribunal ought not to have discarded Ex.A-4 disability certificate issued by PW.2 and ought to have taken the salary of the petitioner at Rs.10,000/- per month, as certified by PW.1, and that what was granted by the Tribunal is very meagre despite the fact that she sustained fracture of colles and scaphoid below elbow, and, therefore, sought to grant the balance amount.

11. Heard Sri Jayanti S.C. Sekhar, learned counsel for the petitioner (appellant) and Sri R. Venkatrao, learned counsel for respondent No.2. However, there is no representation for the 1st respondent, owner of the van involved in the accident.

12. Perused the order under challenge and the evidence, both, oral and documentary, on record.

13. Ex.A-7 discharge summary reflects that the petitioner sustained fracture of colles and scaphoid below elbow and she was treated as inpatient for one day. The injury sustained by the petitioner was treated

conservatively by applying plaster of paris. Thus, as seen from the nature of injuries, it is difficult to accept the evidence of PW.2 as regards disability assessed by him by issuing Ex.A-4.

Thus, the finding recorded by the Tribunal that except stating that clinical and radiological examinations discloses 30% disability, there is no other evidence to accept PW.2's evidence that mal-union of the bone in the wrist caused 30% disability, since well reasoned and well appreciated, does not suffer from any legal infirmity warranting interference.

14. However, coming to the amount of Rs.10,000/- granted by the Tribunal towards pain and suffering, despite the fact that there are two fractures, keeping in view, the nature of injuries and the sufferance the petitioner has undergone, the same is enhanced to Rs.30,000/-. Towards loss of income, though, there is no definite proof as to income, still, the Tribunal has granted Rs.10,000/- towards temporary loss of earnings for one month and the same is confirmed. Towards extra-nourishment and medicines, a sum of Rs.5,000/- and Rs.2,000/-, respectively, were granted by the Tribunal even in the absence of any documentary proof, but, basing on the decision in **Ragani v. Raju (2003 ACJ 1109)** and the same are confirmed. However, towards transportation charges and attendant charges, no

amounts were granted by the Tribunal. Therefore, a sum of Rs.5,000/- is granted for the same.

15. Thus, the petitioner is entitled to a total compensation of Rs.52,000/- (Rupees fifty two thousand) as against Rs.27,000/- awarded by the Tribunal, and the same is accordingly granted, with interest at 7.5% per annum, as against 9% granted by the Tribunal, on the entire compensation, from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 24, 2015.

PV

^[1] 2013ACJ1403 = 2013(4)ALT35