

HONOURABLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A. C.M.A. No.540 OF 2006

JUDGMENT:

Dissatisfied with the award of Rs.40,000/- towards compensation, as against the claim of Rs.2,00,000/-, laid under Sections 166 and 163-A of the Motor Vehicles Act, 1988, seeking enhancement of the same, petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 12-12-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Adilabad, in O.P. No.704 of 2002.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of the tractor bearing No.AP-1-D-3841 that involved in the accident, 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 case of the petitioner in brief is that on 13-01-2002, while he was proceeding along with others as a labourer on the tractor bearing No.AP-1-D-3841, after loading metal at Bangaru Gutta, while returning, at about

2-30 p.m., since driver of the tractor, drove it in a rash and negligent manner and at high speed, it fell in a pit throwing them out, resulting injuries to the petitioner and others, and immediately the petitioner was shifted to Government Head Quarters Hospital, Adilabad, and on 14-01-2002, he was shifted to Dr. Phadke Hospital at Yavatmal, where he underwent surgery for the fracture of his right leg. He states that he spent Rs.25,000/- towards medical expenses. He also claims that he was 18 years old on the date of accident, earning Rs.2,000/- per month and due to fracture, he is unable to eke-out his livelihood and, thus, sought to grant compensation of Rs.2,00,000/-.

5. Before the Tribunal, respondent No.1, owner of the tractor involved in the accident, remained *ex parte*.

6. The 2nd respondent, insurer of the above tractor, opposed the claim by raising various pleas.

7. The Tribunal framed four (4) issues in the direction of fixing responsibility for the accident.

8. During enquiry, the petitioner examined himself as PW.1 and the medical officer, Dr. Ajith V. Phadke, as PW.2 and marked Exs.A-1 to A-11. On behalf of the respondents, no oral or documentary evidence was adduced.

9. The Tribunal on issue Nos.1 and 2, based on the

evidence of PW.1 and Exs.A-1 to A-11, held it in favour of the petitioner.

On issue No.3, based on the description of injuries in Ex.A-4 - discharge card issued by Phadke Hospital, Ex.A-10 - certified copy of the injury certificate issued by the Government Hospital, Adilabad, and the evidence of PW.2, found that the petitioner sustained compound fracture of right femur and, though, PW.2 stated that the petitioner sustained 25% disability, did not agree with it and discarded the disability, but, however, granted Rs.10,000/- towards permanent disability, Rs.20,000/- towards injury, Rs.5,000/- towards medical expenses, Rs.3,000/- for transportation and Rs.2,000/- towards attendant charges, and, thus, awarded a total sum of Rs.40,000/- towards compensation with interest at 7.5% per annum.

10. It is the aforesaid order which is under challenge seeking enhancement by raising various grounds mainly contending that the Tribunal did not properly appreciate the evidence on record and somehow overlooked 25% disability spoken to by PW.2, as contained in Ex.A-7 medical certificate, which reflects permanent disability, and, therefore, sought to grant the balance amount.

11. Heard Sri S. Surender Reddy, learned counsel for the petitioner (appellant). There is no representation

for respondent Nos.1 and 2, owner and insurer of the vehicle involved in the accident in spite of making their appearance.

12. Perused the order under challenge and the oral and documentary evidence, let in by the petitioner.

13. The Tribunal, at one stage, observing that PW.2 is not the proper person to assess and certify the disability sustained by the petitioner, still, observing that the disability affected his earnings, and thereby, awarded Rs.10,000/- towards permanent disability besides granting Rs.20,000/- towards injury as such. Concerning permanent disability, the Tribunal, though, not totally relied on the evidence of PW.2, still, accepts permanent disability sustained by the petitioner but not resorted to the formula by applying multiplier. Therefore, the amount of Rs.10,000/- awarded by the Tribunal towards permanent disability is enhanced to Rs.30,000/-. So far as Rs.20,000/- granted by the Tribunal is concerned, the same is treated towards pain and suffering. Towards extra-nourishment, no amount is granted by the Tribunal. Therefore, a sum of Rs.5,000/- is granted towards the same, basing on the evidence of PW.2. Since, no definite evidence is forthcoming to prove the amount of Rs.25,000/- sought towards medical expenses, the amount of Rs.5,000/- granted by the Tribunal is maintained apart from Rs.3,000/- towards transportation

and Rs.2,000/- towards attendant charges. However, towards future operation, as spoken to by PW.2, a sum of Rs.15,000/- is granted.

14. Thus, the petitioner is entitled to a total sum of Rs.80,000/- (Rupees eighty thousand) as against Rs.40,000/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest at 7.5% per annum from the date of petition till realisation, on the entire compensation, as granted by the Tribunal,
as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1]. The point is accordingly answered.

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

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

A. SHANKAR NARAYANA, J

February 24, 2015.

PV

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