

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.352 of 2006

JUDGMENT:

Dissatisfied with the order, dated 22.08.2005, in O.P.No.68 of 2004, passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, L.B.Nagar (for short 'Tribunal') awarding Rs.1,06,600/- towards compensation with 7.5% interest per annum from the date of O.P. till realisation, as against Rs.1,50,000/- claimed under Section 166 of the Motor Vehicles Act, 1988, for the injuries sustained by him, the claimant preferred this appeal seeking enhancement of compensation awarded by the Tribunal.

2. The appellant herein is the petitioner (claimant), while respondent Nos.1 and 2, who are the owner and insurer, respectively, of the tata sumo bearing registration No.AP 10 T 8656 that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

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

4. The facts, in brief, are that on 09.01.2004 at about 4.45 p.m., while the petitioner was going on a Hero-Honda motor cycle bearing registration No.AP 28 AG 3408 from Secunderabad to Vanasthalipuram, when he reached Tarnaka fly-over, a tata sumo bearing registration No.

AP 10 T 8656 came in a rash and negligent manner with high speed to the extreme right side and dashed his motorcycle, due to which, the petitioner fell down and sustained fractures and other multiple injuries. Immediately, he was shifted to Gandhi Hospital, where he was treated as an in-patient for ten days and later, he took treatment in various

hospitals as out-patient, due to which, he was unable to go to college for studies and also discontinued his private job and, therefore, he sought compensation of Rs.1,50,000/- from respondent Nos.1 and 2 since they, being the owner and insurer of the vehicle that caused accident and are liable to compensate him.

5. Respondent No.1 - owner remained *ex parte* and respondent No.2 – insurer contested the claim before the Tribunal contending that the quantum of compensation claimed is excessive and required the petitioner to prove all the material allegations levelled in the O.P. and finally, sought to dismiss the claim against it.

6. The Tribunal, basing on the pleadings, framed the following issues:

1. Whether the accident occurred due to the rash and negligent driving of the vehicle bearing No.AP 10 T 8656?
2. Whether the offending vehicle was insured with R2 and there is any violation of policy conditions?
3. Whether the petitioner is entitled for any compensation, if so, from whom and to what extent?

7. During enquiry, the petitioner examined himself as P.W.1, cousin of the petitioner's father as P.W.2 and Dr.R.Sree Ramulu as P.W.3, apart from marking nine (9) documents as Exs.A-1 to A-9. On behalf of respondent No.2, except marking Exs.B-1 – insurance policy, no oral evidence was let in.

8. The Tribunal, on issue No.1, relying on Ex.A-1 – certified copy of F.I.R. and considering the oral evidence of P.Ws.1 to 3, held that only on account of the rash and negligent driving of the driver of the tata sumo bearing registration No. AP 10 T 8656, the accident had occurred and accordingly, found favour with the petitioner on this

issue.

9. The Tribunal, on issue Nos.2 and 3, placing reliance on the oral evidence of P.W.3 - medical officer, the description of injuries shown in Ex.A2 - discharge cards issued by the Gandhi Hospital reflecting that the petitioner sustained grade II compound fracture to both bones of right leg and keeping in view, the fact that he was treated with external fixator and again undergone treatment as in-patient and as out-patient at Niveditha Hospital and other hospitals, awarded Rs.50,000/- towards treatment and medicines, Rs.20,000/- towards pain, suffering, compound fracture to both bones of right leg, Rs.1,500/- towards attendant charges, Rs.1,500/- towards transport charges and Rs.3,000/- towards extra nourishment. This apart, the Tribunal took the disability at 10% and taking the income of the petitioner as per Ex.A-8 - salary certificate at Rs.18,000/- per annum and considering the age of the petitioner as 21-22 years, it applied the multiplier '17' for calculating the loss of earnings, which worked out to Rs.30,600/- [10% of Rs.3,06,000/- (18,000 X 17)]. Thus, in all, the Tribunal awarded a sum of Rs.1,06,600/- with interest at 7.5% per annum from the date of O.P. till realisation.

10. Aggrieved by the above said order, the instant appeal is preferred by the petitioner contending that the Tribunal did not properly appreciate the documentary evidence and it ought to have taken the disability at 50% as spoken to by P.W.3. In view of the suffering that the petitioner has undergone and as he has difficulty in squatting, sitting, climbing the stairs, the Tribunal ought to have awarded interest at 9% per annum. Hence, the petitioner sought to grant balance claim of Rs.43,400/-.

11. Heard Sri B.Parameswara Rao, learned counsel for the appellant – petitioner. There is no representation on behalf of respondent No.2 – insurer. It is also on record that respondent No.1 –

owner of the offending vehicle is shown as not a necessary party in the cause title of the grounds of appeal.

12. Now, the short point that arises for consideration is whether the compensation awarded by the Tribunal is just and adequate and whether it needs to be enhanced as sought for?

13. Perused the award of the Tribunal and the evidence let in by the petitioner through P.Ws.1 to 3 and Exs.A-1 to A-9. Insofar as Rs.20,000/- awarded by the Tribunal towards fracture to both bones of right leg and Rs.50,000/- towards treatment and medicines are concerned, they are to be held as reasonable in view of the facts and circumstances of the case and, therefore, the petitioner is not entitled to enhancement. However, insofar as the amount awarded by the Tribunal at Rs.1,500/- towards the attendant charges is concerned, keeping in view, the injuries sustained by the petitioner to his right leg, which would have caused inconvenience in his movement, it is enhanced to Rs.3,000/-. So also, the transport charges awarded by the Tribunal at Rs.1,500/- is enhanced to Rs.3,000/-. As regards the amount awarded by the Tribunal towards extra nourishment at Rs.3,000/-, since the petitioner suffered grievous injuries, it appears to be on lower side and, therefore, it is enhanced to Rs.8,000/-. Insofar as the disability is concerned, the Tribunal took it at 10% and worked out a sum of Rs.30,600/- towards loss of earning capacity by applying the multiplier '17'. In fact, the petitioner's age was shown as 21 years and as per the decision of the Apex Court in **Sarla Verma vs. Delhi Transport Corporation**^[1], the relevant multiplier for the age group of 21 to 25 years is '18'. When the said multiplier is applied, the loss of earning capacity works out to Rs.32,400/- as against Rs.30,600/- awarded by the Tribunal. Thus, the petitioner is entitled to a total compensation of Rs.1,16,400/- [20,000 + 50,000 + 3,000 + 3,000 + 8,000 + 32,400].

14. Accordingly, the Appeal is allowed in part enhancing the compensation awarded by the Tribunal from Rs.1,06,600/- to Rs.1,16,400/-(Rupees one lakh, sixteen thousand and four hundred only), which shall carry interest at 7.5% per annum from the date of O.P. till realization.

15. As a sequel, miscellaneous applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR NARAYANA, J

13th February, 2015
GHN

[\[1\]](#) (2009) 6 SCC 121 = 2009(3) Supreme Today 487