

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1105 of 2005

Judgment:

Having got dissatisfied with the amount of Rs.30,000/- granted by the Tribunal as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Rules framed thereunder, by the order dated 19.10.2004, in MVOP No.260 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Guntur, the instant appeal is preferred seeking enhancement of compensation.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The petitioner, who was minor on the date of accident, aged 17 years, was travelling in a lorry bearing registration No.AIQ-1776 on 26.01.2000 at about 8.30 AM to go to his village Kandrika and when it reached near Joshi Nagar Current Office in Perecherla, another lorry bearing registration No.TN-28B-8989 came in opposite direction driven at high speed in a rash and negligent manner and dashed the lorry in which the petitioner was travelling, due to which he sustained injury to his right leg thigh and other injuries. The driver of the lorry in which the petitioner was travelling died instantly. The petitioner claims that he was shifted to Government Hospital, Guntur. The Station House Officer, Medikonduru, also registered a case in Crime No.7 of 2000 against the driver of the offending lorry. The petitioner claims that he was working as a coolie earning Rs.75/- per day. He lost his earning capacity, he spent Rs.30,000/- towards medical expenses and, therefore, sought Rs.1,50,000/- as compensation against the

respondents 1 and 2 jointly and severally.

4. The first respondent - owner of the vehicle remained *ex parte*.

5. The second respondent, who is the insurer of lorry bearing registration No.TN-28B-8989, which is the opposite lorry, opposed the claim raising various pleas including the driver not possessing valid driving license at the relevant time, besides contending that the compensation sought by the petitioner is excessive and exorbitant.

6. Basing on the said pleadings, the Tribunal framed three issues in order to fix the responsibility for the accident. During enquiry, the Tribunal examined PWs.1 and 2 and also PWs.3 and 4 amongst whom PWs.3 and 4 are doctors and marked Exs.A1 to A4 besides marking Exs.X1 and X2 through PWs.3 and 4. On behalf of the second respondent – Insurance Company Ex.B1 – copy of insurance policy was marked on consent.

7. The Tribunal, having heard the arguments, on appraisal of evidence, on issue No.1, held that due to rash and negligent driving of the driver of the offending lorry the accident had occurred and, accordingly, favoured the petitioner.

8. On issue No.2, taking into consideration the evidence of the petitioner as PW.2 and the doctor examined as PW.4, who has spoken about the 35% partial permanent disability due to fracture shaft of femur right side which was operated on 08.02.2000 and the petitioner was discharged on 18.02.2000 having admitted on 26.01.2000 and there was shortening of 9 CMs up to lower limb of the petitioner and found deformity which was permanent in nature, the Tribunal has granted a sum of Rs.15,000/- towards grievous injury and a sum of Rs.15,000/- towards disability. Thus, a total sum of Rs.30,000/- was granted by the Tribunal with interest at 6% p.a.

9. It is the aforementioned order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and taken the disability at 15% as against 30% as spoken to by the qualified doctor and, therefore, sought to enhance the compensation by granting the balance amount.

10. Heard Sri GVS Mehar Kumar, learned counsel for the appellant, and Sri G. Vishweshwar Rao, learned Standing Counsel for the second respondent – Insurance Company. Despite service of notice, none appears for the first respondent.

11. Perused the order and the evidence on record, both, oral and documentary let in by the petitioner. The fact that the petitioner sustained shortening of 9 CMs of his lower limb is not in dispute, since on that aspect of the case nothing is brought out in the cross-examination of PW.4. The nature of injury as reflected from the evidence of PW.4 and Ex.X2 was a fracture shaft of femur right side. It is not in dispute that the petitioner was admitted on 26.01.2000 and discharged on 18.02.2000 having undergone surgical interventions on 08.02.2000. Therefore, the amount of Rs.15,000/- granted by the Tribunal towards grievous injury appears to be on lower side when kept in view, the nature of injury and surgical intervention undergone by the petitioner. Therefore, the same is enhanced to Rs.25,000/-.

12. Concerning the partial permanent disability, the Tribunal granted a sum of Rs.15,000/- taking the disability as a whole at 15%. The fact that the petitioner sustained shortening of 9 CMs of his lower limb cannot be ignored. Irrespective of the disability whether it was 15% or 35%, keeping in view, the age of the petitioner who was 17 years old on the date of accident and he has to suffer with the shortening of right lower limb which amounts to deformity throughout the rest of his life, it is desirable to enhance the amount of Rs.15,000/- granted by the

Tribunal to Rs.75,000/-. The petitioner is also entitled to Rs.5,000/- towards extra nourishment and for transportation and attendant charges another Rs.5,000/-. Thus, the petitioner is entitled to a total sum of Rs.1,10,000/- as against Rs.30,000/- granted by the Tribunal. The Tribunal granted interest at 6% p.a. The same is enhanced to 7.5% p.a., in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

13. Accordingly, the appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation as well as rate of interest as stated supra. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 20.03.2015
Nsr

^[1] 2013 ACJ 1403 = 2013(4) ALT 35