

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.13 OF 2008

JUDGMENT:

Not satisfied with the award of Rs.35,000/- towards compensation, as against the claim of Rs.1,00,000/-, laid under Section 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 11-09-2007, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Guntur, in M.V.O.P. No.196 of 2005.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.ABK-1044 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 arrayed in the O.P. before the Tribunal.

4. The facts in brief are that the petitioner, who was 14 years old at the relevant time, was earning Rs.900/- per month by doing coolie work. While so, on 23-1-2005

at about 9-30 a.m., when he was proceeding on the left side of the road along with two other persons to return to his home in Janapadu village after completion of work at cotton mill, a lorry bearing No.ABK-1044, which was driven at high speed and in a rash and negligent manner, hit him from behind, due to which, he sustained crush injuries to his both legs and immediately he was admitted in Dr. Anji Reddy Hospital, and after first aid, he was admitted in Government General Hospital, Guntur, wherein he was treated and skin grafting operation was also conducted. He claims that he sustained permanent disability due to the injuries, and, therefore, sought Rs.1,00,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the lorry.

5. Before the Tribunal, the 1st respondent, who is owner of the lorry that involved in the accident, remained *ex parte*.

6. Respondent No.2, insurer of the lorry, opposed the claim by taking various pleas and finally contending that the claim is excessive, sought to dismiss the same.

7. The Tribunal, based on the above pleadings, framed three issues in the direction of fixing responsibility for the accident.

During enquiry, father of the petitioner was examined as PW.1 since the claimant was minor, besides examining

PW.2, an eyewitness to the accident, and PW.3, who treated the petitioner in Government General Hospital, Guntur, and marked Exs.A-1 to A-5, as to entitlement of the petitioner for the compensation claimed.

8. No witnesses were examined and no documents were marked on behalf of the respondents.

9. The Tribunal, on issue No.1, on appraisal of evidence let in by the petitioner through PW.2 supported by Exs.A-1 to A-3, which are certified copies of F.I.R., wound certificate and charge sheet respectively, held issue No.1 in favour of the petitioner. On issue No.2, declined to agree with PW.3 in regard to 30% disability spoken to by him for the reason that the District Medical Board of the District is competent to assess the disability and issue disability certificate, granted a sum of Rs.20,000/- towards grievous injury, Rs.5,000/- towards simple injury, Rs.10,000/- towards expenses for purchase of medicines and extra-nourishment, and, thus, awarded a total sum of Rs.35,000/-, despite observing that Schedule - II to Section 163-A of the M.V. Act, provides Rs.5,000/- for grievous injury and Rs.1,000/- for simple injury, by assigning plausible reasons that it was taking note of the nature of injury, sufferance and duration of the treatment undergone by the claimant as in-patient.

10. Seeking enhancement of the compensation, the

instant appeal is preferred contending in the grounds of appeal that the Tribunal ought to have considered the disability at 30% permanent partial in nature since the Tribunal as per the evidence of PW.3, ought to have awarded interest at 9% per annum, and considering the medical bills covered by Ex.A-5 for Rs.3,609/-, ought to have granted the same towards medical expenses. It is also stated that the Tribunal did not grant other amounts, though, the claimant was hospitalised for 37 days and suffered crush injury to left leg extending up to upper third of the leg exposing muscles and entire tibia, and, thus, sought to grant balance amount.

11. Heard Sri B. Parameswara Rao, learned counsel for the petitioner (appellant).

12. No representation for the 2nd respondent - insurance company. It is mentioned in the cause title of the appeal that the 1st respondent, owner of the lorry, is not a necessary party.

13. Perused the order under challenge and the oral and documentary evidence let in by the claimant.

14. The short question that arises for consideration is whether the petitioner is entitled to enhancement?

15. As seen from the observations made and the findings recorded by the Tribunal, the wound certificate issued by the Government General Hospital, Guntur and the evidence of PW.3, the petitioner sustained an abrasion on right foot and crush injury to the left leg extending from upper third leg to the left foot exposing muscles and entire tibia. The X-ray shows fracture of tibia and fibula left side, fracture of calcaneum right side, external fixation was applied to the fracture of tibia left side, skin grafting was also done to the injury on right foot. The petitioner was suffering from mild restriction of left knee movements and moderate restriction of left ankle movements with mal-union of left tibia and that that was the reason why, PW.3 assessed the disability at 30%, which is permanent and partial. It is no doubt true, no disability certificate was issued and PW.3 made a statement in his evidence as to percentage of disability and the Tribunal, therefore, rightly observed that the District Medical Board is competent to assess the disability and issue a certificate therefor and the Tribunal was right in rejecting percentage of disability spoken to by PW.3. However, keeping in view that the petitioner has suffered from mild restriction of left knee movements and moderate restriction of left ankle movements on account of mal-union of left tibia with which he has to suffer rest of his life, the amount of Rs.20,000/- granted towards said injury

is enhanced to Rs.30,000/-. However, the amount of Rs.5,000/- granted towards simple injury is maintained. But, the Tribunal has not granted any amount towards transportation and attendant charges, therefore, a sum of Rs.3,000/- and Rs.5,000/-, respectively, are granted under these heads. Towards purchase of medicines, the Tribunal has granted a total sum of Rs.10,000/-, but, the value of medicines covered by Ex.A-5 is worth Rs.3,609/-, however, the amount of Rs.10,000/- granted by the Tribunal towards medical expenses is maintained.

The petitioner claimed that he was a minor on the date of occurrence. His case is that he was earning Rs.900/- per month by doing coolie work and he was not prosecuting his studies. So, when looking from that angle, since the petitioner was assisting his parents in making out earnings, a sum of Rs.5,400/- is granted towards loss of temporary earnings at Rs.900/- per month for a period of six months.

16. Thus, the petitioner is entitled to a total compensation of Rs.58,400/- (Rupees fifty eight thousand four hundred) as against Rs.35,000/- awarded by the Tribunal, and the same is accordingly awarded, with interest at 7.5% per annum on the entire compensation from the date of petition till realisation, as the Tribunal has granted interest at that rate and, more particularly, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

17. 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.

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

A. SHANKAR NARAYANA, J

February 18, 2015.

PV

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