

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1163 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.3,13,000/- (Rupees three lakhs and thirteen thousand) as compensation granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge, Nellore (for short 'the Tribunal'), as against the claim of Rs.4,28,318/-(Rupees four lakhs twenty eight thousand three hundred and eighteen) laid under Sections 165, 166 and 140 of Motor Vehicles Act, 1988 (for short 'the Act'), by the order and decree, dated

29-11-2004, in M.V.O.P. No.676 of 1996, the instant appeal is preferred by the petitioner under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.AP 16U 5597, respectively, are respondent Nos.1 and 2, respectively.

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 the petitioner loaded four bags of coal for the purpose of sample at Ongole intending to go to his village in a lorry bearing registration No.AP 16U 5597 and travelling in the said lorry as owner of the goods, and when it reached Rudrakota Junction on GNT road near Kavali town, since its driver has driven in a rash and negligent manner, it hit the stationed lorry bearing registration No.TN 31 6090, resulting in fracture of both legs. He was immediately shifted to Government Hospital, Kavali and, thereafter, to Apollo Hospital, Chennai and was treated as in-patient and, even after his discharge, he was not in a position to attend to his duties. Therefore, he sought the aforesaid amount as compensation against respondent Nos.1 and 2, who

are owner and insurer of the vehicle, respectively.

5 . Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the vehicle, opposed the claim raising various pleas. While contending that the owner and insurer of the stationed lorry bearing registration No.TN 31 6090 are necessary parties and, in their absence, the claim is bad, sought to dismiss the claim against it.

7 . Based on the pleadings, the Tribunal framed four issues about fixing responsibility for the accident. During inquiry before the Tribunal, petitioner besides examining himself as PW.1, has examined Dr.S.V. Satyanarayana from Apollo Hospital, Chennai as PW.2, and marked Exs.A-1 to A-4. On behalf of the 2nd respondent, one Md. Saleem Ahamad was examined as RW.1 and marked

Exs.B-1 and B-2, which are photostat copies of indemnity bond and copy of insurance policy, respectively, issued by the 2nd respondent.

8. On appraisal of both, oral and documentary evidence, let in by both sides, the Tribunal held issue No.1 in favour of the petitioner, holding that on account of rash and negligent driving of the driver of lorry, in which the petitioner was travelling, the accident has occurred.

9. On issue No.2, the Tribunal held that Ex.B-2, copy of insurance policy, was in force, and even, the 2nd respondent admitted in its counter that there was valid coverage of insurance policy at the time of taking place of the accident. On issue No.3, the Tribunal basing on the evidence of PW.2 and finding that the petitioner since June, 1996 has taken treatment till 11-09-1996, and thereafter, on different intervals, granted a sum of Rs.30,000/- towards pain and suffering; Rs.2,22,718.33 paise, towards medical expenses; Rs.4,000/- towards transport

charges; Rs.56,250/- towards partial permanent disability at 25% as against 53% spoken to by the Medical Officer (PW.2), taking the age of petitioner as 45 years, applying multiplier '15' and, thus, granted a total sum of Rs.3,13,000/- with interest at 9% per annum, by directing the Insurance Company to deposit the said amount initially, and recover the same from the 1st respondent with further necessary directions.

10. It is the aforesaid order which is under challenge in the instant appeal, contending in the grounds of appeal that the Tribunal was not right in taking Rs.15,000/- as annual income, despite the fact that the petitioner was doing coal business and earning Rs.5,000/- to Rs.6,000/- per month. It is also stated that the Tribunal was not right in fixing Rs.30,000/- towards pain and suffering, despite the fact that the petitioner has underwent treatment for three years and virtually has undergone several operations. It is also stated that the Tribunal was not right in assessing the disability at 25% without any basis and contrary to the evidence of PW.2 and fixing Rs.56,250/- towards loss of earning capacity, and even, granting Rs.4,000/- towards transport charges, and, therefore, sought to grant balance amount.

11. Heard Sri B. Ravindra Nath Reddy, learned counsel for the appellant – petitioner. When the matter is called, there is no representation on behalf of the 2nd respondent – Insurance Company.

12. The instant appeal was dismissed for default against the 1st respondent, owner of the lorry, by orders, dated 03-01-2012, since, the appellant herein failed to take notice to the owner. But, in view of the judgment of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**, it has to be concluded that the said dismissal is of no consequence in fastening the liability on insurer – the 2nd respondent, since 1st respondent – owner remained *ex parte* before the Tribunal.

13. Perused the order and the evidence let in by both sides.

14. The short question that arises for consideration is,

Whether the appellant is entitled to enhancement of compensation?

15. The evidence of PW.2 is material in assessing whether the compensation awarded by the Tribunal is just and adequate or otherwise. PW.2 is Dr.S.V. Satyanarayana, who was working as Professor of Orthopaedics in Ramachandra Medical College, Chennai. His evidence shows that he examined the petitioner in the month of June, 1996 for the first time in his hospital. He found open fracture of both bones of both legs and there was infection in both legs of the petitioner and the petitioner attended the hospital for a period of six years to take treatment. Initially, the petitioner was treated as in-patient up to 11-09-1996 from the month of June, 1996, with surgical intervention of wound debridement with external ilizarov fixator and, again got admitted on 11-07-1998 and was discharged on 26-07-1998, during which time the petitioner underwent skin grafting by taking out skin from his left thigh. Again, the petitioner was admitted as in-patient on

06-01-1999 and underwent bone grafting of both legs by collecting bone from his right hip bone called right ilium and grafted it in his right fore leg and left fore leg. The petitioner was again admitted on 26-02-1999 and was discharged on 03-03-1999, during which time, he underwent left leg external fixator and right leg plaster cast treatment, and again the petitioner was admitted on 30-06-1999 and was discharged on 01-07-1999, during which time, PW.2 noticed that both legs started uniting and he (PW.1) was able to bear weight with the help of support and, thereafter, he attended the hospital as out-patient and took the treatment. His opinion was that the petitioner can walk freely, but only with the help of stick and not fit for any hard work and can not do work of going and purchasing coal. He assessed the disability at 53%. It is no doubt true, in his cross-examination, it was elicited that he (PW.2) has not issued any disability certificate and that the fractures were united, but denied the suggestion that he has exaggerated the percentage of disability to help the

petitioner to get more compensation. He has also denied the suggestion that it was purely a case of deformity but not a disability. This has been the evidence of PW.2 touching the treatment given to PW.1 and the surgical intervention time and again and the treatment being continued for about six years. So, when kept in view, the same, the amount of Rs.30,000/- granted by the Tribunal towards pain and suffering appears to be on lower side and, therefore, the same is enhanced to Rs.50,000/-.

16. Coming to disability, the Tribunal has taken the notional income at Rs.15,000/- per annum on the ground that there was no proof of income. That finding recorded by the Tribunal was based in the absence of any documentary evidence being filed by the petitioner to show that he was doing business and earning

a definite amount during the relevant period and, therefore, the same is not disturbed. However, concerning percentage of disability, the Tribunal restricted it to 25% as against 53% spoken to by PW.2. It is, no doubt true, that PW.2 has not elaborated as to how he arrived at 53% partial and permanent disability. But, as seen from the nature of injuries, as well as the treatment undergone by the petitioner, it invariably suggests that he must have sustained partial permanent disability a minimum of 50% in the absence of any convincing reasons assigned by the Tribunal in reducing the percentage of disability to 25%. Hence, the petitioner is entitled to additionally Rs.56,250/- towards the other 25% disability. Towards transport charges, the petitioner was awarded a sum of Rs.4,000/-.

17. The very fact that the petitioner has visited PW.2 as spoken to by PW.2 at Chennai would indicate that the amount of Rs.4,000/- granted by the Tribunal is on lower side and, therefore, the same is enhanced to Rs.10,000/- towards transport charges. The Tribunal has not granted any amount towards extra nourishment. Keeping in view, the sufferance which the petitioner has undergone, a sum of Rs.10,000/- is granted towards extra nourishment. Certainly, the petitioner must have required an attendant, at least, for some time and, therefore, towards the same, a sum of Rs.15,000/- is granted. The Tribunal has granted Rs.2,22,718.33 paise towards medical expenses and the

same is maintained. Thus, the petitioner is additionally entitled to Rs.1,07,250/-. In all, the petitioner is entitled to Rs.4,20,250/- (Rupees four lakhs twenty thousand two hundred and fifty). [additional amount of Rs.1,07,250/- + Rs.3,13,000/- granted by the Tribunal]. Concerning interest, the Tribunal granted it at 9% per annum, but the same is reduced to 7.5% per annum as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

18. In the result, appeal is allowed in part, and the order and decree, dated 29-11-2004, in M.V.O.P. No.676 of 1996, passed by the Tribunal are modified, enhancing the compensation to Rs.4,20,250/- (Rupees four lakhs twenty thousand two hundred and fifty) from Rs.3,13,000/-(Rupees three lakhs and thirteen thousand) with interest thereon at 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

19. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

March 25, 2015.

Mgr