

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.3104 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.1,17,000/- as against the claim of Rs.4,00,000/- laid under Section 163-A and 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the order, dated 26-04-2004, in O.P. No.107 of 2001, on the file of Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Adilabad, the instant appeal is preferred by the petitioner seeking enhancement.

2. The appellant herein is the petitioner in O.P. before the Tribunal, while respondent Nos.1 to 3 herein, who are driver, owner and insurer of Lorry bearing registration No.KA-40/123, respectively, are Respondent Nos.1 to 3, 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 along with his relatives was travelling in a Cargo Van bearing registration No.AP 09-W-1025 from Gudihathnur to Chincholi cross roads on 05-07-2000, and at about 16:30 hours when they reached near Bandam ragadi road on National Highway No.7, respondent No.1 herein drove the lorry bearing registration No.KA-40/123 at high speed in a rash and negligent manner and hit their van from opposite direction, due to which, the petitioner sustained crush injury to his right foot and other injuries to his right leg. Contending that he sustained permanent disability and loss of earning capacity, sought to grant compensation of Rs.4,00,000/-

against respondent Nos.1 to 3, who are driver, owner and insurer of the lorry.

5. Respondent Nos.1 and 2, driver and owner of the vehicle, remained *ex parte*.

6. Respondent No.3, its insurer, opposed the claim.

7. The Tribunal has framed four issues about the responsibility for the accident.

8. During inquiry, the petitioner examined himself as PW.1 and marked Exs.A-1 to A-4. On behalf of respondent No.3, no evidence either oral or documentary was let in.

9. The Tribunal on appraisal of evidence on record held issue No.1 in favour of the petitioner recording the finding that due to rash and negligent driving of the 1st respondent, the accident had occurred. On issue No.2, taking into consideration that the petitioner sustained fracture to his right leg and there was even amputation resulting 65% permanent disability, granted a total sum of Rs.1,17,000/- quantifying it at Rs.15,000/- for grievous injury; Rs.2,000/- for two simple injuries; and Rs.1,00,000/- for amputation of right leg coupled with disability under all heads, with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement of compensation contending in the grounds that though he sustained amputation of right leg, still, the Tribunal has not properly appreciated the evidence on record and has not granted any amount under the

head of loss of earnings, future prospects of earnings, transport expenses, medical expenses, extra nourishment and for pain and suffering for each injury and, therefore, sought to grant balance amount.

11. Heard Sri S. Surender Reddy, learned counsel for the appellant – petitioner and Sri G. Purushotham Rao, learned Standing Counsel for respondent No.3 – Insurance Company. The cause title itself shows that respondent No.1 is not a necessary party in this appeal. So far as respondent No.2 is concerned, as per the orders of this Court, dated 06-01-2012, the notice sent to respondent No.2's address as given in the OP and in case it is not served on him, the same should be treated as served.

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

13. It is needless to mention that the petitioner's right leg was amputated resulting in 65% permanent disability. Ex.A-3 disability certificate was issued by the Medical Board, Adilabad, but the petitioner could not examine the doctor for the reasons best known to him. The fact that the right leg of the petitioner was amputated is not in dispute, so also the nature of injuries and the sufferance which the petitioner had undergone. The Tribunal has granted a sum of Rs.1,17,000/- basing on injury certificate Ex.A-2 issued by the Assistant Surgeon, Community Hospital, Nirmal, showing that there was crush injury of right foot and ankle and certain injuries on his body.

14. The very fact that the petitioner sustained amputation is

sufficient enough to hold that it would be difficult for him to pursue his lease cultivation or to do agriculture work. Keeping in view, that he must be earning Rs.3,000/- per month or Rs.36,000/- per annum and aged 50 years, and applying multiplier '13' as provided for the age group of persons between 46 and 50 as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1], and the disability at 65% as mentioned in the medical certificate in view of the amputation of right leg, the loss of earning capacity which is partial permanent in nature would work out to Rs.3,04,200/- [Rs.36,000/- x 65% x 13]. Besides the same, the petitioner is entitled to Rs.25,000/- towards pain and suffering. Towards extra nourishment a sum of Rs.15,000/- is granted. Towards attendant charges at the rate of Rs.2,000/- per month for three months, a sum of Rs.6,000/- is granted. Towards transport charges, a sum of Rs.2,000/- is granted. Thus, in all, the petitioner is entitled to

Rs.3,52,200/- as compensation.[Rs.3,04,200/- + Rs.25,000/- + Rs.15,000/- + Rs.6,000/- + Rs.2,000/-]

15. Concerning rate of interest, the Tribunal has granted the same at 9% per annum, the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.2,35,200/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2].

16. In the result, the appeal is allowed in part, and the order

and decree, dated 26-04-2004, in O.P. No.107 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.3,52,200/- from Rs.1,17,000/- with interest at the rate of 9% per annum on the amount of Rs.1,17,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.2,35,200/- from the date of petition. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

December 23, 2015.

Mgr

[\[1\]](#) . (2009) 6 Supreme Court Cases 121

[\[2\]](#) . 2013 ACJ 1403