

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.603 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.31,000/- granted by the Tribunal as compensation for the injuries sustained by the petitioner as against the claim of Rs.1,00,000/- laid under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') by the order dated 20.01.2005, in M.V.O.P.No.325 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Guntur (for short 'the Tribunal'), the instant appeal is preferred.

2. The appellant herein is the petitioner in the original petition before the Tribunal, while respondent Nos.1 and 2, who are the owner and insurer of the tractor and trailer bearing No.AP-07-H-6896 and 6897 respectively, were respondent Nos.1 and 2 respectively.

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

4. The facts in brief are that on 07.12.2001, the petitioner was travelling in a tractor and trailer bearing No.AP-07-H-6896 and 6897, belonging to the 1st respondent, with the load of marriage articles by paying fair for both herself and goods from Atchampet to Chigurupadu road and when it reached Chigurupadu village at about 10.00 AM, since the driver of the tractor and trailer drove it in a rash and negligent manner and dashed against a tree, the trailer separated from the tractor and turned upside down, resulting injuries to the petitioner. She claims that she sustained permanent disability and, therefore, sought Rs.1,00,000/- as compensation against respondent Nos.1 and 2, who are the owner and insurer of the tractor and trailer respectively.

5. The 1st respondent-owner of the vehicle remained *ex parte* before the Tribunal and the 2nd respondent-Insurance Company opposed the claim raising various pleas, requiring the petitioner to prove the allegations mentioned in the petition.

6. Basing on the above pleadings, the Tribunal framed three issues about the

responsibility for the accident. During enquiry, the petitioner herself was examined as P.W.1 besides examining Dr. Y.Lakshmanaswamy as PW.2 and marked Exs.A.1 to A.4. On behalf of the 2nd respondent-Insurance Company, RWs.1 and 2 were examined and marked Exs.B.1 to B.5 besides marking Exs.X.1 to X.3.

7. The Tribunal on appraisal of evidence, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal basing on the evidence of PW.2, which reflects that the petitioner sustained fracture of left femur and there was shortening of right lower limb by one inch which resulted in restriction of hip and knee movement and estimated 10 to 15% disability of partial and permanent nature and, therefore, the Tribunal granted Rs.20,000/- towards the injury and Rs.5,000/- towards medical expenses and Rs.6,000/- towards pain and suffering, making a total sum of Rs.31,000/- on all heads.

8. It is the said order which is under challenge, in the instant appeal, preferred by the petitioner on the ground that meager compensation was granted contending that the Tribunal did not properly appreciate the evidence on record and also the Tribunal did not take into consideration 15% disability sustained by the petitioner and, therefore, sought to grant balance amount.

9. Heard Sri N. Subba Rao, learned counsel for the appellant and Smt. A.Jayanthi, learned counsel for the 2nd respondent-insurance company. Despite service of notice, none appears for the 1st respondent.

10. Perused the order under challenge and oral and documentary evidence let in by the petitioner. The finding recorded by the Tribunal in arriving at Rs.20,000/- towards partial and permanent disability by resorting to the multiplier '13' taking the age of the petitioner as 45 years with the percentage of disability at 10%, though, appears to be correct in view of the law then prevailing. But, in view of the decision in **Sarla Verma & others v. Delhi Transport Corporation and another**, the relevant multiplier is '15', and when the same is applied, it works out to Rs.22,500/- ($\text{Rs.15,000/-} \times 15 \times 10 / 100 = \text{Rs.22,500/-}$) as against Rs.20,000/- granted by the Tribunal. So far as other amounts are concerned, the same shall be maintained. Though, there is no specific finding with regard to Rs.6,000/-, the same shall be treated as Rs.6,000/- towards extra nourishment. Further, an amount of Rs.5,000/- towards pain and suffering and Rs.3,000/- towards attendant and transport charges, are granted. Thus, the petitioner is entitled to a sum of Rs.41,500/- as against

Rs.31,000/-, with interest at 7.5% per annum as per the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***.

11. In the result, the appeal is allowed in part and the award and decree dated 20.01.2005 passed by the Tribunal in M.V.O.P.No.325 of 2002 is modified, enhancing the compensation to Rs.41,500/- from Rs.31,000/-, with interest at 7.5% per annum from the date of petition till realization, as against 9% per annum granted by the Tribunal, on the entire compensation, as per the decision of the Hon'ble Apex Court in **Rajesh's case** (Supra 2). There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 11.02.2015.

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