

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1886 OF 2005

JUDGMENT:

The instant appeal is preferred by respondent No.2 – Oriental Insurance Company Limited in M.V.O.P.No.17 of 2000 on the file of Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Cuddapah, aggrieved by the order, dated 02.04.2004, whereby and whereunder, a sum of Rs.85,000/- with interest at 9% per annum thereon was granted as compensation, as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988, on the ground that the Tribunal has granted excess compensation.

2. The appellant is respondent No.2, whereas respondent No.1 is the petitioner and respondent No.2 is respondent No.1 in the O.P. before the Tribunal.

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, on 24.09.1999 at about 08:00 AM, while the petitioner was returning to Madhavaram on his vehicle and when he reached Church

cross road on Vontimitta – Cuddapah main road, a lorry bearing Registration No.AP-02-U-1235 driven at high speed in a rash and negligent manner dashed the vehicle, due to which, the lorry ran over him resulting in injuries to him. Therefore, he laid claim for Rs.1,50,000/- against respondent Nos.1 and 2, who are the owner and insurer of the lorry, respectively.

5. Owner of the lorry remained *ex parte*. The Insurance Company opposed the claim.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal framed three issues. During enquiry, the petitioner besides examining himself as PW.1 examined one G. Venkatasubbaiah as PW.2 and marked Exs.A1 to A7 to substantiate the claim laid. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

7. The Tribunal, on overall assessment of the evidence let in by the petitioner, recorded a finding that due to rash and negligent driving of the lorry driver the incident had occurred and accordingly, held issue No.1 in favour of the petitioner.

8. On issue No.2, on the basis of description of the injuries shown in Ex.A2 – Certified Copy of Wound

Certificate issued by the Assistant Civil Surgeon, Government Hospital, Cuddapah, the Tribunal has considered that the petitioner sustained 20% partial permanent disability as against 35% spoken to by PW.2 and further, considering that the petitioner was 37 years old earning Rs.2,000/- per month, by applying multiplier '16', had arrived at Rs.76,800/- towards loss of earning capacity and also granted Rs.3,200/- towards pain and suffering besides granting Rs.5,000/- towards medical expenses and thus, granted a total sum of Rs.85,000/- as compensation with interest at 9% per annum.

9. The aforesaid order is under challenge in the instant appeal preferred by the Insurance Company contending that the Tribunal was wrong in taking monthly earnings of the petitioner at Rs.2,000/- in accordance with G.O.Ms.No.263, as the said amount is mentioned therein as the income of a semi skilled worker and therefore, sought to set aside the impugned order. It is also stated that the Tribunal ought not to have granted interest at 9% per annum.

10. Heard Sri I. Maamu Vani, learned counsel for the appellant. There is no representation for respondent No.1 – claimant, when the matter is called. None appears for respondent No.2 – owner of the vehicle, who suffered decree in the O.P..

11. Perused the impugned order and the evidence on record.

12. There is no dispute between the parties with regard to the manner in which the accident had taken place. Therefore, the finding recorded on issue No.1 is confirmed. Concerning whether the petitioner did really suffer permanent disability, the evidence of PW.2 shows that he found tenderness over the left arm, surgical scar over anterior aspect of the left arm and lateral deformity. Muscle wasting was also found by him around the left arm and there was loss of sensation over the anterior aspect of the left arm. He had also found weakness of the anterior compartment of the muscles producing difficulty in flexion of the left elbow and causing difficulty in lifting weights. These observations were based on the report of the X-ray film, which was to the effect that left arm was grossly mal united with lateral deformity. He assessed the disability at 35%. He was cross-examined by the learned counsel for Insurance Company. Except suggesting to him that PW.1 did not suffer disability and the percentage of disability shown by him was incorrect, nothing else is brought out in his cross-examination to discard his evidence or the disability certificate issued by him. Even otherwise, the Tribunal has reduced the disability from 35% to 20% by assigning reasons. Further, the Tribunal

has not awarded any amount towards extra-nourishment, transport charges etc. Even the amount awarded towards pain and suffering by the Tribunal is on lower side and therefore, viewed from any angle, awarding Rs.85,000/- as compensation does not suffer from any infirmity. Hence, the same is confirmed.

13. Concerning the rate of interest, the Tribunal has granted interest at the rate of 9% per annum, but in view of the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1], interest at the rate of 7.5% per annum is permissible. Therefore, the rate of interest granted by the Tribunal at 9% per annum on the amount awarded is reduced to 7.5% per annum.

14. Thus, the instant appeal is partly allowed to the extent indicated above. There shall be no order as to costs.

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

A. SHANKAR

NARAYANA, J

December 28, 2015.

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