

**HON'BLE SRI JUSTICE A. SHANKAR**

**NARAYANA**

**M.A.C.M.A. No.3081 OF 2005**

**JUDGMENT:**

Aggrieved by the award of Rs.2,25,000/-, which was also the claim laid by the petitioner under Section 166 of the Motor Vehicles Act,1988 (for short 'the Act'), granted as compensation by order, dated 07-10-2004, in M.V.O.P. No.879 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Kadapa, (for short 'the Tribunal'), respondent No.2 – M/s. New India Assurance Company Limited preferred the instant appeal under Section 173 of the Act, on the ground that the compensation awarded was highly excessive.

2. The appellant herein is the 2<sup>nd</sup> respondent in the O.P. before the Tribunal, while respondent No.1 herein is the petitioner and Respondent No.2 is respondent No.1.

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 07-06-2001, the petitioner was travelling in an auto-rickshaw bearing registration No.AP 13T 2807 and at about 2.45 p.m., when it reached near Saibaba Theatre, Kadapa, since the driver of the auto-rickshaw drove it in a rash and negligent manner and failed to control the speed, it turned upside down occasioning injuries to the petitioner, who, initially, was admitted in Pragathi Orthopaedic and General Hospital, Kadapa, where he underwent surgery. Claiming that he incurred huge expenditure and suffered 27% disability, sought

Rs.2,25,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the auto-rickshaw, respectively.

5. Respondent No.1, owner of the auto-rickshaw, remained *ex parte*.

6. Respondent No.2 opposed the claim raising various pleas.

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

8. During inquiry before the Tribunal, the petitioner besides examining himself as PW.1 has also examined Dr. B. Ramachandraiah, as PW.2 and marked Exs.A-1 to A-8. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

9. The Tribunal on issue No.1 having appreciated the evidence on record let in by the petitioner, held that due to rash and negligent driving of the driver of the auto-rickshaw, the accident had occurred. On issue No.2, basing on the evidence of Medical Officer examined as PW.2, and since there was shortening of leg by 3/4" and the disability at 27%, granted Rs.15,000/- towards medical expenses; taking the income at Rs.4,000/- per month as against Rs.5,000/- claimed by the petitioner for want of definite proof of income and the petitioner being 30 years on the date of accident, applied multiplier '18' and arrived at Rs.2,33,280/- towards loss of future earning capacity. The Tribunal has also granted Rs.5,000/- towards pain and suffering and, restricted the sum to Rs.2,25,000/- though,

determined the compensation at Rs.2,53,280/-. The Tribunal has awarded interest at the rate of 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the 2<sup>nd</sup> respondent – Insurance Company contending in the grounds that the Tribunal without there-being any legally acceptable evidence, taken the monthly earnings at Rs.4,000/- and even in the absence of any medical evidence in regard to loss of earning capacity, finding recorded by the Tribunal that the petitioner sustained 27% partial permanent disability is improper and even multiplier ‘18’ applied by the Tribunal is incorrect and, thereby sought to set aside the order and decree.

11. Heard Sri T. Ramulu, learned counsel for the appellant – Insurance Company, and Sri K. Murali Krishna, learned counsel for respondent No.1 – Petitioner. The instant appeal against respondent No.2, who is respondent No.1 in the MVOP, was dismissed for default, by order, dated 06-01-2012, and the same makes no difference in deciding the controversy herein as he suffered decree.

12. The only submission made by the learned counsel for the Insurance Company is, that the Tribunal has applied wrong multiplier; the relevant multiplier is ‘17’ for the age group of persons between 25 and 30 years; and to that extent, he sought to modify the order and decree. However, the learned counsel concedes that even multiplier ‘17’ is applied to the multiplicand, compensation would exceed Rs.2,25,000/-, which is the very claim made by the petitioner.

13. Perused the order and the evidence on record. The age of the petitioner is arrived at 30 years by the Tribunal, in which case, the relevant multiplier would be '17'. The Tribunal, in fact, by applying multiplier '18' with the percentage of disability as 27%, arrived the loss of earning capacity at Rs.2,33,280/-, besides awarding Rs.15,000/- towards medical expenses and Rs.5,000/- towards pain and suffering and, thus, arrived at a total compensation of Rs.2,53,280/-, but restricted it to Rs.2,25,000/-. In that view of the matter, there is no merit in the instant appeal and even if multiplier '17' is applied, certainly, it would be more than the claim that has been laid by the petitioner. Even the Tribunal has not granted any amount towards extra nourishment and transport charges.

14. Therefore, the appeal is dismissed. No order as to costs.

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

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**A. SHANKAR NARAYANA, J**

**December 21, 2015.**

Mgr