

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1227 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.56,000/- granted as compensation by the order dated 03.02.2005 in O.P. No.44 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar (for short, 'the Tribunal') as against the claim of Rs.2,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the appellant in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the driver-cum-owner and insurer of Tata Sumo bearing registration No.AP 15V 5321, respectively, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The facts in brief are that on 27.12.2002, the petitioner along with his younger son went to Godavarikhani on their Luna and having attended a function in their relative's house at Godavarikhani, when

they were returning to National Thermal Power Corporation and reached Kavitha Talkies at about 9-00 p.m., a Tata Sumo bearing registration No.AP 15V 5321 driven by its driver-cum-owner (respondent No.1) came in a rash and negligent manner and dashed the Luna, due to which, the petitioner and his son fell down and the petitioner sustained fracture to his left-knee and immediately he was shifted to Trauma Ortho Care Hospital, Godavarikhani, where he was given first-aid and thereafter, he was shifted to Yashoda Hospital, Hyderabad, where he had undergone surgical intervention and he was treated there as an inpatient from 28.12.2002 to 06.01.2003, as the fracture was not healed and he incurred an expenditure of Rs.80,000/- towards treatment. Claiming that he was working as a Carpenter, drawing Rs.9,000/- per month as salary and, on account of injuries, he is unable to walk and he lost his earning capacity, sought a sum of Rs.2,50,000/- from respondent Nos.1 and 2, who are driver-cum-owner and insurer of the accident vehicle.

5. Respondent No.1-driver-cum-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the accident took place due to rash and negligent driving of the vehicle bearing No.AP.15.V.5321 by its driver?

2. Whether the vehicle in question has got valid insurance on the date of the accident?

3. Whether the petitioners are entitled for compensation, if so to what amount and from whom?

4. To what relief ?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining one of the doctors of the Medical Board, Dr. J.Mothilal as P.W.2 and marked Exs.A.1 to A.15 to substantiate his claim; whereas, on behalf of the respondents, no witnesses were examined, but a copy of insurance policy of the accident vehicle was marked as Ex.B.1 on consent.

8. The Tribunal, on analyzing the evidence let in by the petitioner, held issue No.1 in favour of the petitioner; and on issue Nos.2 to 4, despite observing that the disability certificate was issued by one of the doctors of Medical Board showing 40% disability, but somehow, has not taken the disability into consideration and granted Rs.15,000/- towards pain and suffering, Rs.15,000/- towards loss of future amenities of life, Rs.10,000/- towards medical expenses, Rs.10,000/- for removal of implants and Rs.6,000/- towards loss of earnings. Thus,

the Tribunal granted a total sum of Rs.56,000/- as compensation with interest at 9% per annum from the date of petition till realization.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly assigned reasons as to why the permanent disability was not taken into consideration, though, the Medical Officer was examined to prove the contents of Ex.A.10-disability certificate and, therefore, sought to grant the balance amount.

10. Heard Sri Venkateshwar Varanasi, learned counsel for the appellant-petitioner. It is endorsed in the cause title of the grounds that respondent No.1 is not a necessary party. Though, effected with notice, none appears for respondent No.2-New India Assurance Company Limited.

11. Perused the order under challenge and the evidence available on record, both, oral and documentary, let in by the petitioner. The medical evidence on record show that the petitioner was treated in Yashoda Hospital, Hyderabad, for 15 days as inpatient and there was surgical intervention for insertion of implants as evident from Ex.A.9. The description therein would show that there is a final bill, which was settled on 06.01.2003. The final bill amount shows Rs.30,583/- and a concession of

Rs.5,033/- was given. Thus, the balance would work out to Rs.25,550/-. Besides the same, the said bill also shows the doctor's fee separately as Rs.12,450/-. Thus, the petitioner is entitled to Rs.38,000/- towards medical expenses as against Rs.10,000/-.

12. Touching the permanent disability claimed by the petitioner, a perusal of the order under challenge would reflect that the Tribunal, somehow, did not take into consideration the permanent disability certificate, but the said finding recorded suffers for want of reasons. There is no reason to exclude the said record. Therefore, in regard to determination of compensation towards permanent disability, certainly, the petitioner is entitled to, and the order under challenge suffers for want of assigning any reasons from excluding the permanent disability and the evidence of P.W.2. Nowhere in the order, it is stated as to why the evidence of P.W.2 and the medical record filed by the petitioner was not considered.

13. Now turning to the disability, Ex.A.10 would clearly show that the petitioner sustained 40% permanent disability on account of shortening of left lower limb. The said certificate was issued by the Medical Board of Karimnagar District bearing signatures of the Chairman and Member and the official seal of the authority. In arriving at 40% partial permanent disability, the reasons are shown thus:

"Post operative inter condylar fracture left tibia with plates and screws inside, fracture united. Genu Varus deformity is present, one inch shortening of left lower limb, wasting of thigh and leg musculature, stiffness of right knee and limping."

14. The said certificate was issued on 15.11.2003. Thus, it was issued 11 months after the date of accident and, therefore, it cannot be disbelieved in arriving at, that the petitioner sustained permanent disability. However, it being only towards percentage of disability of left lower limb and the petitioner being the Carpenter, the same can be worked out at 20% towards loss of future earning capacity. The petitioner was drawing a salary of Rs.7,966/- as per the salary certificate- Ex.A.5. It is not disputed by the other side. Even there is nothing to disbelieve the same, as nothing is brought out in the cross-examination of P.W.1 to show that it is a fabricated document, nor the Tribunal did make any observation thereon. Therefore, the partial permanent disability is taken at 20% and the income at Rs.7,966/- per month. Thus, the annual income works out to Rs.95,592/- . Since the petitioner was aged 48 years as on the date of accident, relevant multiplier would be '13' as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1].

Since the partial permanent disability is considered at 20%, the loss of earnings on account of the partial permanent disability, works out to Rs.2,48,539/- (Rs.95,592/- x '13' x 20%) and the same is granted as against Rs.15,000/- and Rs.6,000/- granted by the Tribunal towards loss of future amenities and loss of earnings, respectively. The Tribunal has granted Rs.15,000/- towards pain and suffering and Rs.10,000/- for removal of implants and the same are confirmed.

Towards attendant charges, a sum of Rs.2,000/- is granted, as the Tribunal has not granted any amount under this head.

15. Petitioner laid the claim for Rs.2,50,000/- only, but, certainly, he cannot be deprived of Rs.3,13,539/-, though, it exceeds the claim made by him, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**^[2], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**^[3] and **Rajesh's** case (supra 2), wherein, it was held that it is the duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made.

16. Thus, the petitioner is entitled to a total sum of

Rs.3,13,539/- (Rupees three lakhs thirteen thousand five hundred and thirty nine) as against Rs.56,000/- granted by the Tribunal, towards compensation and the same is accordingly granted. However, the petitioner is directed to pay Court fee on the excess amount granted by this Court than the claim within a period of three months from today.

17. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount granted by the Tribunal, but on the enhanced amount, it is granted at 7.5% per annum from the date of petition till realization in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[4].

18. Accordingly, the instant appeal is allowed modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

10th December, 2015

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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) **AIR 2003 SC 674**

[\[3\]](#) **2012 ACJ 191 (SC)**

[\[4\]](#) 2013 ACJ 1403