

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1391 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.1,08,000/- (Rupees one lakh and eight thousand) for the injuries sustained by the petitioner, granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge, Visakhapatnam, by order and decree, dated 15-04-2004, in M.O.P. No.1717 of 2000, as against the claim of Rs.2,00,000/- (Rupees two lakh) laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, the appellant - petitioner preferred the instant appeal under Section 173 of the Act, seeking enhancement of compensation.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer of Lorry bearing registration No.AP 31V 39, 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. Turning to the facts, on 29-07-2000 at about 5.00 A.M., the petitioner, being a vegetable vendor, along with other vegetable vendors boarded the lorry bearing registration No.AP 31V 39 at Tagarapuvalasa to go to Visakhapatnam and, when the lorry reached G.V.S.N. Transport, Bajal Junction, Venkojipalem, Visakhapatnam, due to rash and negligent driving of

driver of the lorry (respondent No.1), the lorry hit the road divider, due to which, the petitioner and another vegetable vendor -

Y. Ramanamma, fell down and sustained injuries. The petitioner became unconscious having sustained head injury.

i) The III Town Traffic Police Station, Visakhapatnam, registered a case in Crime No.84 of 2000 under Section 338 of the Indian Penal Code, 1860 against respondent No.1, driver of the lorry.

ii) The petitioner was treated as in-patient from 29-07-2000 to 14-08-2000. She was not in a position to talk properly. She was undergoing treatment under the supervision of doctors of K.G. Hospital even on the date of filing the claim petition. She lost her earnings and, therefore, sought a sum of Rs.2,00,000/- (Rupees two lakh) as compensation against respondent Nos.1 to 3, who are driver, owner and insurer of the accident vehicle, respectively.

5. The claim against respondent No.1 was dismissed by the Tribunal for non-payment of batta.

6. Respondent No.2 remained *ex parte* before the Tribunal.

7. Respondent No.3 filed its counter resisting the claim by raising various pleas even, attributing contributory negligence to the petitioner.

8. The Tribunal framed three issues about the responsibility for the accident.

9. During inquiry before the Tribunal, father of the petitioner

examined himself as PW.1, besides examining PWs.2 and 3 and marking Exs.A-1 to A-7. On behalf of respondent No.3, RW.1 was examined and marked Ex.B-1, copy of insurance policy.

10. On issue No.1, the Tribunal, on appraisal of evidence on record, held that due to rash and negligent driving of the driver of the lorry, the accident has occurred.

11. On issue No.2, taking into consideration the evidence of PW.3, Dr. D.B. Udaya Kumar, and the nature of injuries sustained by the petitioner, more particularly, she was in coma for 05 (five), granted a sum of Rs.1,00,000/-(Rupees one lakh) towards continuing and permanent disability, Rs.5,000/-(Rupees five thousand) towards pain and suffering and Rs.3,000/-(Rupees three thousand) towards extra nourishment, medicines, treatment and transport etc., and, thus, a total sum of Rs.1,08,000/-(Rupees one lakh and eight thousand) was granted with interest at 9% per annum thereon, fastening liability on respondent No.2 alone while dismissing the claim against driver and insurer, who are respondent Nos.1 and 3, respectively.

12. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record and ought to have awarded the entire amount as the petitioner has been suffering from permanent disability.

13. Though, in the grounds of appeal, the petitioner claimed that the Insurance Company cannot escape its liability, however, learned counsel for the petitioner – appellant has not pressed the appeal against respondent No.3 – Insurance Company. It is

mentioned in the cause title that respondent No.1, driver of the lorry, is not a necessary party as the claim against him was dismissed for non-payment of batta before the Tribunal.

14. Heard Smt.N. (P) Anjana Devi, learned counsel for the appellant – petitioner. None appears for respondent No.2.

15. Submission of the learned counsel for the petitioner is, that evidence of PW.3 would make it abundantly clear that on account of permanent disability, the petitioner cannot move and she being a vegetable vendor has to pursue her business by selling vegetables, and for the injuries sustained by her, she requires medical attention throughout life and there was a head injury which fact was not taken into consideration by the Tribunal and, therefore, sought to grant the balance amount.

16. Now, the only point that arises for consideration is, whether the petitioner is entitled to enhancement?

17. Perused the evidence on record and the order of the Tribunal. Ex.A-6 is the scan film with report, which reveals a mixed dense lesion with areas of high attenuation values (55HU) in the left frontal cortex. It is not in dispute that the petitioner was unconscious and was in coma for 05 (five) days. Ex.A-7, case sheet, also proves that the petitioner was admitted in the hospital on 29-07-2000 and discharged on 14-08-2000 from K.G. Hospital, Visakhapatnam. When kept in view, the same, the amount of Rs.1,00,000/- granted by the Tribunal towards continuing permanent disability is enhanced to Rs.1,25,000/-.

18. The Tribunal has not granted any amount, though the

petitioner produced medical bills to the tune of Rs.14,669.29ps. marked as Ex.A-5 and, on the other hand, granted Rs.3,000/- towards extra nourishment, medicines, treatment and transport etc. Therefore, the said amount is also granted rounding it to Rs.14,670/-. Towards pain and suffering, the Tribunal has granted Rs.5,000/- which is also enhanced to Rs.15,000/- keeping in view, the nature of injuries sustained by the petitioner. The amount of Rs.3,000/- towards extra nourishment, treatment and transport which includes medicines is enhanced to Rs.6,000/-. Thus, in all, the petitioner is entitled to a sum of Rs.1,60,670/- [Rs.1,25,000/- + Rs.14,670/- + Rs.15,000/- + Rs.6,000/-] as compensation.

19. Concerning the rate of interest, the Tribunal granted it at 9% per annum, but the same is reduced to 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

20. In the result, the appeal is allowed in part, and the order and decree, dated 15-04-2004, in M.O.P. No.1717 of 2000, passed by the Tribunal, are modified only to the extent of enhancing the compensation to Rs.1,60,670/- (Rupees one lakh sixty thousand six hundred and seventy) from Rs.1,08,000/- (Rupees one lakh and eight thousand) with interest at the rate of 7.5% per annum thereon from the date of petition till realization, confirming in all other respects including exonerating the liability of the Insurance Company. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

October 27, 2015.

Mgr

[\[1\]](#). 2013 ACJ 1403