

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.439 OF 2006

JUDGMENT:

Dissatisfied with the award of Rs.25,000/- towards compensation, as against the claim for Rs.1,00,000/-, laid under Sections 140 and 160 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking enhancement of the same, claimant preferred this Civil Miscellaneous Appeal against the order and decree, dated 28-12-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - VII Additional District Judge, Guntur, in M.V.O.P. No.516 of 2003.

2. The appellant herein is the claimant, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.APG - 9960 that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 10-06-2003, while the claimant along with others was travelling in a Jeep from Guntur to Amaravathi, at about 7-30 p.m., when the

Jeep reached Tadikonda Electrical Substation, lorry bearing No.APG-9960, came in opposite direction and since its driver drove it at high speed and in a rash and negligent manner, hit the jeep, resulting injuries to the claimant,

and immediately he was shifted to G.G.H., Guntur, for treatment. Even the Station House Officer, Tadikonda Police Station, registered a case in Crime No.39 of 2003 for the offences punishable under Sections 337 and 338 I.P.C. against the driver of the lorry.

The claimant claiming that he was 25 years old, earning Rs.200/- per day by doing welding work and that he sustained multiple injuries all over his body and permanent disability, sought to grant a sum of Rs.1,00,000/- towards compensation.

5. Before the Tribunal, respondent No.1, owner of the lorry that involved in the accident, remained *ex parte*.

6. Respondent No.2, insurer of the lorry, opposed the claim by taking various pleas.

7. The Tribunal framed three issues in the direction of fixing responsibility for the accident. During enquiry, the claimant examined himself as PW.1 and also examined Dr. S.S.V. Ramana as PW.2 and marked Exs.A-1 to A-4. On behalf of the respondents,

no witnesses were examined and no documents were marked.

8. The Tribunal, on appreciation of evidence on record, held issue No.1 in favour of the claimant. On issue No.2, taking into consideration, the deformity of swelling over left fore arm and an abrasion of 3 x 1 CMs. on left side back, which are grievous and simple injuries, respectively, granted Rs.6,000/- towards damages for pain and suffering and based on the evidence of PW.2, affirmed the partial permanent disability at 10%. Since there was no proof to show that the claimant was earning Rs.200/- per day, assessed his notional income at Rs.15,000/- per annum and after deducting $\frac{1}{3}$ rd i.e., Rs.5,000/- ($\text{Rs.15,000/-} \times \frac{1}{3}$) therefrom towards his personal expenses, by applying multiplier '17', as per Schedule - II to

Section 163-A of the Motor Vehicles Act, arrived at Rs.17,000/- ($\text{Rs.10,000/-} \times 17 \times 10\%$) towards partial permanent disability, besides Rs.2,000/- towards miscellaneous charges, and, thus, granted a sum of Rs.25,000/- towards compensation.

9. It is the abovementioned order, which is under challenge in the instant appeal by the claimant contending that the Tribunal did not appreciate the evidence of PWs.1 and 2 and Exs.A-1 to A-4 and that the Tribunal ought to have taken income of the claimant as Rs.200/- per day

and without assigning any reasons, taken his income notionally at Rs.15,000/- per annum, and, thus, sought to grant the balance amount.

10. Heard Sri B. Parameswara Rao, learned counsel for the claimant (appellant), and Sri N.S. Bhaskar Rao, learned counsel for the 2nd respondent - insurance company.

11. Respondent No.1, who is owner of the lorry that involved in the accident, is shown, in the cause title of the appeal, as not a necessary party.

12. Perused the order under challenge and the oral and documentary evidence let in by the claimant.

13. The short point that arises for consideration is whether the claimant is entitled to any enhancement?

14. As seen from the oral and documentary evidence, let in by the claimant, the first injury, which is grievous in nature as reflected from Ex.A-3 shows fracture of lower 1/3rd of radius and *ana*, whereas the second injury is a simple one. Therefore, towards simple injury, a sum of Rs.3,000/- is granted by enhancing the amount from Rs.1,000/- granted by the Tribunal. Concerning pain and suffering, a sum of Rs.10,000/- is granted as against the amount of Rs.6,000/- awarded by the Tribunal.

Concerning the disability, the Tribunal was not right in deducting 1/3rd from the notional income fixed towards personal expenses, as it is not a death case. Therefore, notional income taken by the Tribunal at Rs.15,000/- per annum is maintained. Concerning multiplier, since the claimant was 25 years old at the relevant time, the appropriate multiplier is '18' for his age group as per the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**^[1]. Thus, when notional income of the claimant is multiplied with multiplier '18', it comes to Rs.2,70,000/-, and 10% thereof comes to Rs.27,000/- (Rs.2,70,000/- x 10%) and the same is, accordingly, granted towards 10% partial permanent disability, as no appeal is preferred by the insurance company challenging the finding recorded by the Tribunal, despite the fact that there is no disability certificate forthcoming from the side of the claimant. This apart, the claimant is entitled to Rs.6,000/- towards extra-nourishment, keeping in view the sufferance he has undergone. Further, the amount of Rs.2,000/- awarded by the Tribunal towards miscellaneous charges is not maintained.

15. Thus, the claimant is entitled to a total compensation of Rs.48,000/- (Rupees forty eight thousand) as against Rs.25,000/- awarded by the Tribunal, and the same is accordingly awarded, with interest at 7.5% per annum from the date of petition till

realisation as granted by the Tribunal.

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 16, 2015.

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