

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No.543 OF 2005

JUDGMENT:

The petitioner, having got dissatisfied with the amount of Rs.32,600/- granted as compensation in M.V.O.P.No.1161 of 2002 on 18.08.2004 by the Chairman, Motor Accidents Claims Tribunal-cum- XI Additional District Judge, Guntur (for short "Tribunal"), against the claim of Rs.1,00,000/- with interest at 9% per annum laid under Sections 140 and 166 of the Motor Vehicles Act, 1988, preferred the present appeal.

2. The appellant herein is the petitioner, while respondents 1 and 2 herein, who are owner of the lorry bearing No.AP 16 W 8177, its insured and insurer respectively, are respondents 1 and 2 respectively, in O.P before the Tribunal.

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

4. The facts, in brief, are that on 02.06.2002 at about 04.15 PM, the petitioner and his friend Mastanvali were going to collect the amounts due to said Mastanvali on his motor cycle bearing No.AP 7G 9075. The said Mastanvali was driving the motorcycle and the petitioner was the pillion rider and when they reached 1½ km south to Mortur Police Station on NH.5, a lorry bearing No.AP 16 W 8177 came in opposite direction, driven at high speed by its driver and hit the motor cycle, due to which the petitioner and Mastan Vali fell down and sustained grievous injuries and were later shifted to Government Hospital, Chilakaluripet. The petitioner had taken treatment in a private nursing home and spent Rs.3,000/- towards medicines and treatment.

Police concerned registered a case in Crime No.48 of 2002 under Sections 337 and 338 IPC. The petitioner, therefore, sought compensation of Rs.1,00,000/- including Rs.25,000/- towards no fault liability, making respondents 1 and 2 jointly and severally liable to pay compensation.

5. Respondent No.1 did not oppose the claim of the petitioner before

the Tribunal. The 2nd respondent opposed the claim of the petitioner stating that the lorry was not insured with it and sought to dismiss the claim of the petitioner.

6. Based on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner himself examined as PW.1 and the doctor, who treated the injured, was examined as PW.2 and marked Exs.A1 to A.4. On behalf of the respondents, none were examined and no documents were marked.

7. On appraisal of evidence, both, oral and documentary, the Tribunal held issue No.1 in favour of the petitioner, having found that only due to rash and negligent driving of the driver of the lorry, accident had occurred.

8. On issue No.2, the Tribunal did not agree with the opinion expressed by PW.2 – Medical Officer that the petitioner sustained 20% disability and observed that the petitioner can lift the weight up to 15 kgs without difficulty and that for tinkering job, lifting of weight more than 15 kgs is not required. Therefore, the tribunal assessed the functional disability as 10% and taken the income of the petitioner at Rs.1,000/- per month and Rs.12,000/- per annum and by applying multiplier '18' assessed the loss of future earnings at Rs.20,600/-. Thus, a total sum of Rs.32,600/- was granted with interest at 9% per annum.

9. Being aggrieved by the compensation granted by the Tribunal, the petitioner preferred the instant appeal contending that the Tribunal was not right in reducing the disability from 20% to 10%, especially, when the doctor examined him and that the tribunal ought to have taken the earnings of the petitioner at Rs.150/- per day and sought to enhance the compensation.

10. Heard Sri N.Subba Rao, learned counsel for the petitioner – appellant. No representation for the respondent No.2 – insurance company.

11. Memo in SR No.252 of 2012 was filed along with postal acknowledgment as to proof of service on the 1st respondent. None appears for the 1st respondent.

12. Now, the short point that arises for consideration is - whether the petitioner is entitled to enhancement of compensation?

13. Perused the oral and documentary evidence let in by the petitioner and the order under challenge. It is no doubt true, that the 1st respondent, owner of the lorry that involved in the accident, did not put up contest.

However, the same is of no consequence to decide the quantum of compensation in the present appeal. The Tribunal is right in rejecting 20% disability, as spoken to by PW.2 and arriving the functional disability at 10%, since the evidence of PW.2 would clearly show that PW1 was admitted as in-patient and conservative treatment was given i.e., he was applied adhesive plasters as a part of the treatment and that he cannot say whether injury was 100% cured, but however, says that it was almost cured, but there may be residual functional disability. The doctor also opined that the petitioner can lift the weight up to 15 kgs without difficulty. These admissions clinching enough to arrive the functional disability at 10%. Since there is no acceptable evidence except self-serving statement made by the petitioner as to his monthly earnings, the amount of Rs.20,600/- as arrived at by the Tribunal towards loss of future earnings and Rs.10,000/- towards pain and suffering and Rs.2,000/- towards medicines and treatment are maintained. However, as no amount is granted towards extra nourishment, Rs.8,000/- is granted. In view of the nature of injury sustained by the petitioner, Rs.2,000/- is granted towards transportation charges. Thus, the petitioner is totally entitled to Rs.42,600/-.

14. Concerning the interest, the Tribunal has granted interest at 9% per annum. However, the petitioner is entitled to interest at 7.5% per annum on the compensation from the date of petition till realisation, in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

15. Accordingly, the Appeal is allowed-in-part modifying the award and decree by enhancing the compensation and reducing the rate of interest as stated supra. There shall be no order as to costs.

16. As a sequel, Miscellaneous Applications, if any, pending shall stand disposed of.

A. SHANKAR NARAYANA, J

February 13, 2015.
Kvrm

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No.543 OF 2005

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DATE: 13.02.2015

[\[1\]](#) 2013ACJ 1403 = 2013(4) ALT 35