

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1148 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.1,42,500/- towards compensation as against the claim of Rs.2,50,000/-, laid under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') and the Rules made thereunder, seeking enhancement, petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 28-03-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - IX Additional District Judge, Guntur, in M.V.O.P. No.1212 of 2002.

2. The appellant herein is the petitioner (claimant) in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.ABJ-1234, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 06-09-2002 at 8-00 p.m., while the petitioner, who was aged 16 years, was crossing the road near Reddy Hotel at the outskirts of Piduguralla, driver of the lorry bearing No.ABJ-1234 driven it in a rash and negligent manner at high speed, dashed him, due to which, both the legs of the petitioner were crushed and immediately he was taken to Government Hospital, Piduguralla, and, after the first-aid, he was shifted to GGH, Guntur,

where he was treated as inpatient and for crush injuries, operation was conducted, however, his both legs became lean and bend and he has been limping, and there is restriction in movements of legs, as such, he cannot walk without the assistance of others. He states that he was bedridden and became disabled due to the crush injury for the rest of his life. The next friend of the petitioner also got mentioned that the petitioner was working in a hotel and used to earn Rs.50/- per day and sustained permanent disability and unable to do his work, due to the injuries sustained by him, and, therefore, sought to grant Rs.2,50,000/- towards compensation.

5. Respondent No.1, owner of the lorry involved in the accident, remained *ex parte* before the Tribunal.

6 . Respondent No.2, insurer of the lorry involved in the accident, filed written statement opposing the claim raising various pleas.

7. Based on the pleadings put-forth by the parties, the Tribunal framed three (3) issues in the direction of fixing responsibility for the accident. During enquiry, the petitioner examined himself as PW.1, whereas his father was examined as PW.2 and Dr. Y. Seetharamanjaneyulu as PW.3 and marked Exs.A-1 to A-5 apart from Ex.X-1 case sheet maintained by GGH, Guntur on summoning. On behalf of the respondents, no oral or documentary evidence was adduced.

8 . On issue No.1, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held it in favour of the petitioner. On issue No.2, considering the evidence of PW.3, who has spoken to as to the injuries sustained by the petitioner and the treatment he has given and taking percentage of disability at 50%, based on the

evidence of PW.3, and the notional income at Rs.15,000/- per annum, taking the age of the petitioner as 12 years as in Ex.X-1, since the claim was laid under Section 163-A of the Act, by applying multiplier '15', determined the loss of earning capacity at Rs.1,12,500/-, besides granting Rs.5,000/- towards medicines, Rs.15,000/- towards pain and suffering and Rs.10,000/- towards loss of amenities, and, thus, granted a total sum of Rs.1,42,500/- towards compensation with interest at 9% per annum.

9 . It is the aforesaid order, which is under challenge in the instant appeal by the petitioner on the main ground that meagre compensation was awarded by the Tribunal despite the fact that the petitioner has to bear with the partial permanent disability of 50% through out his life, and, therefore, sought to grant the balance amount.

10. Heard Sri N. Subba Rao, learned counsel for the petitioner (appellant), and Sri C. Prakash Reddy, learned counsel for the 2nd respondent - insurance company.

11 . Despite service of notice, none represents respondent No.1, owner of the lorry that involved in the accident.

12. Perused the order under challenge and the evidence, both, oral and documentary, let in by the petitioner.

13. As seen from the order under challenge, so far as determination of compensation is concerned, the Tribunal has accepted 50% partial permanent disability of the petitioner as spoken to by PW.3 and taking his notional income at Rs.15,000/- per annum, by applying multiplier '15', as provided in Schedule - II to Section 163-A of the Act, determined the loss of earning capacity of the petitioner at Rs.1,12,500/-, which can not be faulted with as it was strictly in accordance with the provisions of the Act. Further, the Tribunal has granted Rs.5,000/- towards medicines, though the amount covered by the bills filed by the petitioner was to the tune of Rs.2,565/-. Therefore, the petitioner is not entitled to any enhancement under this head. Concerning pain and suffering, the Tribunal has granted Rs.15,000/-; Thus, the Tribunal has granted more than what was provided by Schedule - II to Section 163-A of the Act. However, since the insurance company has not challenged the same, the same is maintained. Towards loss of amenities, the Tribunal taking note of the evidence of PW.3 and accepting his evidence that the petitioner cannot walk for more than 100 yards and cannot perform labour acts and he cannot walk as a normal man, granted Rs.10,000/-. Towards the same, Section 163 of the Act has not provided any definite amount. Therefore, the same is enhanced to Rs.50,000/-, keeping in view, the sufferance the petitioner has to continue to undergo for the rest of his life.

14. Thus, the petitioner is entitled to a total compensation of Rs.1,82,500/- (Rupees one lakh eighty two thousand and five hundred) as against Rs.1,42,500/- awarded by the Tribunal, and the same is accordingly granted, with interest at 7.5% per annum, on the entire compensation, as against 9% per annum granted by the Tribunal, from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

15. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and the rate of interest, as indicated

above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 24, 2015.

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