

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1156 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.24,350/-(Rupees twenty four thousand three hundred and fifty) as compensation as against the claim of Rs.1,00,000/-(Rupees one lakh) laid under Section 163-A of Motor Vehicles Act,1988 (for short 'the Act'), by the order, dated 14-02-2005, in M.V.O.P. No.462 of 2003, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge, Guntur (for short 'the Tribunal'), the petitioner preferred the instant appeal seeking enhancement of compensation for the injuries sustained by him.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of Tipper (Lorry) bearing registration No.ADB 7225, respectively, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 03-05-2003 at about 8.30 P.M., the petitioner was travelling in an Auto-rickshaw bearing registration No.AP 7X 6522 along with others from Chebrolu to Guntur on left side of Ponnur – Guntur road, during which time, a tipper bearing registration No.ADB 7225 driven by its driver at high speed in a rash and negligent manner came from opposite direction and hit the auto-rickshaw, resulting in injuries to the petitioner. He was taken to Government General Hospital, Guntur. Even, the Station House Officer, Chebrolu Police Station registered a case in Crime No.69 of 2003 against the driver of tipper. The petitioner claims that he has undergone surgical intervention to his right leg

and steel rods were inserted and suffered shortening of right leg, he cannot work properly and squat and, therefore, sought to grant the aforementioned amount as compensation.

5. Respondent No.1, owner of the tipper, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company filed written statement opposing the claim.

7. Based on the pleadings, the Tribunal framed three issues about fixing responsibility for the accident. During inquiry before the Tribunal, petitioner besides examining himself as PW.1 has examined Dr. Y. Lakshmana Swamy as PW.2, and marked Exs.A-1 to A-7. On behalf of the 2nd respondent, no witnesses were examined and no documents were filed.

8. The Tribunal, on appraisal of evidence, held issue No.1 in favour of the petitioner. On issue No.2, despite accepting the evidence of PW.2 as to partial permanent disability sustained by the petitioner, though, he assessed it at 10%, the Tribunal has taken only 5% without assigning any reasons and taking the notional income at Rs.15,000/- per annum, applying multiplier '16' taking the age of the petitioner as 18 years, worked out the loss of earning capacity at Rs.12,000/-, besides awarding Rs.5,000/- towards grievous injury and Rs.7,350/- towards medical expenses and, thus, granted a total sum of Rs.24,350/- as compensation with interest at 6% per annum thereon.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioner, contending in the grounds of appeal, that the Tribunal has not properly appreciated the evidence of PW.2 on record and without assigning any reasons, reduced the percentage of disability to 5% from 10% and, therefore, sought to grant the balance amount.

10. Heard Sri N. Subba Rao, learned counsel for the appellant – petitioner. No representation on behalf of the

2nd respondent. The instant appeal was dismissed against the

1st respondent, owner of the tipper, on 03-01-2012, but it makes no difference in view of the fact that the 1st respondent has not chosen to contest the claim before the Tribunal and in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi babu Rao @ Reddemma**.

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11. Coming to the request for enhancement of compensation, it is no doubt true, that there is no proof to show that the petitioner was earning Rs.100/- per day. Even taking the notional income at Rs.15,000/- per annum and the age of petitioner as 18 years, the relevant multiplier is '18' and the disability at 10% , as no reasons were assigned by the Tribunal in reducing it from 10% to 5%, loss of earning capacity which works out to Rs.27,000/- [Rs.15,000/- x 10% x 18] is granted. The Tribunal has granted Rs.5,000/- towards grievous injury and, when kept in view, the nature of injuries sustained by the petitioner, that being deformity of swelling at lower 1/3rd of both bones of right leg and, in fact, he sustained fracture of both bones as per the evidence of PW.2 and, therefore, it is enhanced to Rs.20,000/- which includes pain and suffering, as he was treated as in-patient from 03-05-2003 to 16-05-2003 in Government General Hospital, Guntur and interlocking of right tibia was done. Towards extra nourishment, a sum of Rs.5,000/- is awarded. Towards attendant charges and transport charges, a sum of Rs.5,000/- is granted. Towards temporary loss of earnings, for six months, a sum of Rs.7,500/- @ Rs.1,250/- per month, is granted. The amount of Rs.7,350/- granted by the Tribunal towards medical expenses is maintained. Thus, in all, the petitioner is entitled to Rs.71,850/- as against Rs.24,350/- granted by the Tribunal. Concerning interest, the Tribunal granted the same at 6% per annum, but the same is enhanced to 7.5% per annum as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

12. In the result, appeal is allowed in part, and the order and decree, dated 14-02-2005, in M.V.O.P. No.462 of 2003, passed by the Tribunal are modified,

enhancing the compensation to Rs.71,850/- (Rupees seventy one thousand eight hundred and fifty) from Rs.24,350/-(Rupees twenty four thousand three hundred and fifty) with interest thereon at 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

April 01, 2015.

Mgr