HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.3102 AND 3472 OF 2005

COMMON JUDGMENT:

Former appeal – M.A.C.M.A. No.3102 of 2005 is preferred by M/s National Insurance Company Limited on the ground that excess amount was granted towards compensation and, thus, questioned the quantum of compensation, and latter appeal – M.A.C.M.A. No.3472 of 2005 is preferred by the petitioner seeking enhancement on the ground that meager compensation was awarded by the learned Chairman, Motor Accidents Claims Tribunal – cum – Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal'). Thus, both the appeals arise from out of very same order, dated 01-02-2005, passed by the Tribunal in O.P. No.226 of 2002, whereby and whereunder a sum of Rs.4,14,000/-(Rupees four lakhs and fourteen thousand only) was granted as compensation to the petitioner with interest at 9% per annum, as against the claim for Rs.6,00,000/-(Rupees six lakhs only) laid under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') for the injuries sustained in a road accident.

2. The appellant - Insurance Company in the former appeal is respondent No.2 in the latter appeal and also in the O.P. before the Tribunal, while respondent No.1 in the former appeal is the appellant in the latter appeal and petitioner before the Tribunal. The owner of the vehicle - insured is respondent No.2 in the former appeal and respondent No.1 in the latter appeal and also in the O.P. before the Tribunal.

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

4. The facts, in brief, are that on 28-07-2001, while the petitioner was proceeding on his Bajaj 4S Motor Cycle bearing registration No.AP 9G 903 along with his wife and child from his house towards Miyapur and when he

reached Mysammagudi at Miyapur, a lorry tanker bearing registration No.HR 55 3386 belonging to the 1st respondent and insured with the 2nd respondent driven by its driver at high speed and in a rash and negligent manner came from behind and hit his motor bike, due to which, he fell down and received grievous injuries. He was immediately shifted to C.D.R. Hospital and had to take continuous treatment. On account of the accident, he lost his job and, thus, he claimed various amounts under relevant heads making it to Rs.6,00,000/-.

5. Respondent No.1, owner of the vehicle, did not choose to contest the matter and, thus, it was set *ex parte* by the Tribunal.

6. Respondent No.2 – Insurance Company raised various grounds opposing the claim and, finally, sought to dismiss the claim.

7 . The Tribunal framed three (03) issues about the responsibility for the accident.

8 . During inquiry before the Tribunal, on behalf of the petitioner, he examined himself as PW.1 and examined
Dr.S. Venkat Raman as PW.2 and marked Exs.A-1 to A-29, and also got marked Ex.C-1 case sheets through PW.2. Whereas, on behalf of the Insurance Company, none was examined, but copy of insurance policy was marked as Ex.B-1.

9. The Tribunal, on over-all assessment of the evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, basing on Ex.A-3, evidence of PW.2 and having found that there was amputation of left leg below knee joint and taking into consideration the treatment he has undergone in various hospitals and considering the evidence of PW.2 - Medical Officer, granted Rs.65,000/- towards medical expenses, transportation and other charges; Rs.15,000/- towards loss of temporary earnings computed at the rate of Rs.2,500/- per month; Rs.2,34,000/- towards loss of future income taking into

consideration 65% towards partial and permanent disability and also considering the sufferance, which the petitioner has undergone and granted Rs.1,00,000/- towards amputation of leg and fracture of left humerus. Thus, a total sum of Rs.4,14,000/- was granted as compensation with interest at 9% per annum.

10. Aggrieved of the said compensation, the Insurance Company – 2nd respondent preferred the former appeal contending in the grounds of appeal that the Tribunal went wrong in taking the salary of petitioner at Rs.2,500/- per month without there-being any concrete evidence, and even, the Tribunal went wrong in sidelining the fact that the amputation of left leg below knee level will not prevent the petitioner from making his future earnings and his job prospects were not hindered. It is also stated that the Tribunal ought not to have awarded Rs.1,00,000/- towards pain and suffering and, therefore, sought to set aside the order and decree.

i) In the latter appeal, the petitioner while seeking enhancement stated in the grounds of appeal that the Tribunal ought to have granted medical expenses and attendant charges as projected by him, and that the Tribunal ought to have held that he was working as Manager in Vardhan Banking Services having studied B.Com., and holding P.G. Diploma and ought to have granted transport charges of Rs.5,000/- and damages to clothing and vehicle and, therefore, sought to grant the amounts as sought for.

11. Learned counsel for the Insurance Company and the learned counsel for the petitioner raised their respective contentions based on the grounds of appeal as narrated in the above.

12. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioner, more particularly, evidence of PW.2 and the case sheets marked as
Ex.C-1 and the medical evidence through Exs.A-5 to A-29.

13. The finding recorded by the Tribunal on issue No.1 is, of course, not challenged since the Insurance Company in the former appeal only attacked the quantum of compensation granted by the Tribunal. It is the submission of learned counsel for the Insurance Company that though, there is no concrete proof or legally acceptable evidence to show that the petitioner spent Rs.96,954/- towards medical expenses, and that the Tribunal recorded observation, at one stage, that the petitioner spent Rs.59,971/-, still, granted Rs.65,000/- and, therefore, sought to grant only Rs.59,971/- as against Rs.65,000/-. A perusal of the observations made by the Tribunal in arriving at Rs.65,000/- towards medical expenses, transportation and other charges, since based on appreciation of evidence, cannot be faulted with.

14. It is the contention of the learned counsel for the Insurance Company that, though, the petitioner claimed that he was drawing salary of Rs.6,000/- per month and filed Ex.A-26, but he has not examined his employer, and even his evidence would show that he was withdrawing Rs.6,000/- towards salary etc. per month and his Chairman issued Ex.A-26 salary certificate and that his employer used to obtain voucher for Rs.1,000/- every month from him and he used to draw the remaining salary of Rs.5,000/-and, therefore, the Tribunal was not right in taking the monthly income at Rs.2,500/-. Whereas, the learned counsel for the petitioner submits that in fact, the petitioner was drawing Rs.6,000/- per month and the Tribunal ought to have taken Rs.6,000/- as monthly income and worked out the loss of future income basing on the said monthly income.

15. A perusal of the order under challenge would reflect that the Tribunal referring to the income of a non-earning member at Rs.1,500/- per month, as provided under II - Schedule to Section 163-A of the Act, keeping in view, that the petitioner was a bank employee, arrived at Rs.2,500/- per month as the said amount would be reasonable earning. That finding recorded by the Tribunal is based on convincing reasons assigned there-for and, therefore, does not warrant any interference. The Tribunal applied multiplier '12' and, in fact, multiplier '15' is provided as per the decision of the Hon'ble Apex Court in **Sarla**

Verma & others v. Delhi Transport Corporation and another. Even, Rs.15,000/- awarded by the Tribunal, towards loss of temporary earnings, does not warrant any interference. The amount of Rs.1,00,000/- granted by the Tribunal towards pain and suffering for amputation of left leg below knee and closed fracture of left humerus mid shaft cannot be commented, since the Tribunal placed reliance on the decisions rendered by various High Courts. Therefore, the amount of Rs.4,14,000/- granted by the Tribunal towards compensation for the amputation of left leg below knee and closed fracture of humerus mid shaft is just and adequate viewed from any angle and, therefore, there is no merit in the former appeal and the same is liable to be dismissed.

16. Turning to the latter appeal preferred by the petitioner, though, it is claimed by the learned counsel for the petitioner that the Tribunal ought to have granted Rs.96,954/- towards medical expenses but granted only Rs.65,000/-, it is to state that cogent reasons have been assigned by the Tribunal in arriving at Rs.65,000/- and, in fact, the Tribunal assessed the medical expenses at Rs.59,971/-, but, however, granted Rs.65,000/- which includes transportation and other charges and, therefore, there is no merit in the submission made by the learned counsel for the petitioner.

17. Concerning the ground that the salary of petitioner at Rs.6,000/- per month ought to have taken by the Tribunal, there is no legally acceptable evidence on record and, in fact, the Tribunal made the observation that vouchers were not placed and marked as documents and, therefore, disbelieved the evidence of PW.1 to that extent basing on the admissions made by him in his cross-examination which were extracted in sub-paragraph - (f) of paragraph No.9 of the order. Therefore, that submission is without any merit. No doubt, multiplier '15' has to be applied as per the decision of the Hon'ble Apex Court in **Sarla Verma's Case**
(Supra 1), but, however, the very fact that Rs.1,00,000/- was awarded towards pain and suffering, by all means, would meet the difference of amount that would be arrived at, if the multiplier '15' is applied in place of '12'. Thus, viewed from any angle, there is no merit even in the latter appeal preferred by the petitioner for enhancement and, therefore, the same is also liable to be dismissed.

18. In the result, both the appeals are dismissed. However, there shall be no order as to costs.

19. As a sequel thereto, miscellaneous applications, if any, pending in both the appeals, stand disposed of.

A. SHANKAR NARAYANA, J

February 09, 2015

Mgr