

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A.C.M.A. No.880 OF 2005

JUDGMENT:

Not satisfied with the award of Rs.51,000/- (Rupees fifty one thousand) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge (Fast Track Court), Kadapa (for short 'the Tribunal'), by order and decree, dated 19-01-2005, in M.V.O.P. No.636 of 2002, for the injuries sustained by the petitioner as against the claim of Rs.2,50,000/- (Rupees two lakhs and fifty thousand) laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is filed by the petitioner under Section 173 of the Act.

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 Jeep bearing registration No.AP 04T 8694, respectively, are respondent Nos.1 and 2 and respondent No.3, to whom respondent No.1 sold the jeep before taking place of accident and who is subsequently added as per orders in I.A.No.156 of 2003, dated 29-01-2004, is respondent No.3

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 01-03-2002 at about 10.30 A.M., while the petitioner was standing on foot-path near Thana of Rayachoty town to go to her in-laws house, a jeep bearing registration No.AP 04T 8694 coming from T. Sundupalli road

towards Nethaji Circle driven by its driver at high speed in a rash and negligent manner moved on the left foot region of the petitioner. She was immediately shifted to Government Hospital, Rayachoty in an auto-rickshaw and, thereafter, she was referred to Government General Hospital, Kadapa. She states that she spent Rs.25,000/- towards medical expenses and was taking the treatment even on the date of filing the claim petition. Therefore, she sought to grant a sum of Rs.2,50,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the jeep.

5. Respondent Nos.1 and 3 remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company opposed the claim, raising various pleas.

7. Based on the pleadings, the Tribunal framed three issues about fixing responsibility for the accident. During inquiry, on behalf of petitioner, she examined herself as PW.1 and also examined Dr.G. Venkata Subbaiah as PW.2 and marked Exs.A-1 to A-9. On behalf of the contesting respondent, one R. Prathap Reddy was examined as RW.1 and marked Ex.B-1, copy of insurance policy.

8. The Tribunal, on issue No.1, on appraisal of evidence let in by the petitioner through herself as PW.1 supported by Exs.A-1 to A-3, held it in favour of the petitioner. On issue No.2, having taken the value of household services at Rs.2,500/- per month, granted Rs.6,000/- towards loss of temporary income; Rs.20,000/- towards medicines; Rs.10,000/- towards pain and suffering,

besides Rs.15,000/- towards disability, though, 30% partial permanent disability was spoken to by PW.2, the doctor and, thus, a total sum of Rs.51,000/- was granted as compensation with interest at 9% per annum thereon, fastening joint and several liability on both respondent Nos.1 and 2.

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 granted meager amount, despite the fact that the petitioner sustained 30% disability and the Tribunal ought to have resorted to multiplier method and multiplier '18' is applicable to the age of petitioner and, therefore, sought to grant balance amount.

10. Heard Sri D. Kodandarami Reddy, learned counsel for the appellant – petitioner and Sri N. Mohan Krishna, learned counsel for respondent No.2 – Insurance Company. As per the memo filed by the learned counsel for the appellant, notice was served on respondent No.1, while the notice sent to respondent No.3 returned un-served. In view of the same, it makes no difference in deciding the controversy in the absence of owner of the vehicle, as they remained *ex parte* even before the Tribunal.

11. Perused the order and the evidence on record both, oral and documentary, let in by the petitioner.

12. The evidence of PW.2 would show that he found deformity of left foot and the loss of three toes of left foot and that the 5th toe was deformed. Due to loss of toes and deformity of 5th toe and contracture of tendons and skin of great toe, it was difficult for PW.1 to walk and wearing of chappals and, thus, he found left

foot disfiguration and estimated the permanent disability at 30% and issued Ex.A-6, disability certificate. Of course, nothing was brought out in his cross-examination to disbelieve the percentage of disability spoken to by PW.2, but for the loss of three toes and the deformity of one toe, 30% disability was given by him, and that may be the reason why, the Tribunal has granted Rs.15,000/- as against Rs.2,00,000/- claimed by the petitioner. It is, thus, abundantly clear that the petitioner lost three toes and one toe with deformity with which she has to suffer through out the rest of her life, as she was aged 42 years on the date of accident. Keeping in view, the loss of three toes even

@ Rs.25,000/- each, it amounts to Rs.75,000/-, and for the deformity of one more toe, a sum of Rs.15,000/- can be granted and, thus, she is entitled to Rs.90,000/- towards 30% disability as against Rs.15,000/- granted by the Tribunal.

13. It is no doubt true, the Tribunal considered her household services and by guess work it has estimated the value at Rs.2,500/- per month, but basing on the same, the determination of compensation by applying formula may not be proper. Therefore, towards permanent disability, a sum of Rs.90,000/- is awarded. The other sums granted by the Tribunal at Rs.20,000/- towards medicines; Rs.10,000/- towards pain and suffering and Rs.6,000/- towards temporary loss of earning capacity/value of house-hold services are hereby confirmed. But, the Tribunal has not granted any amount towards extra nourishment and, therefore, a sum of Rs.5,000/- is granted under the said head. Thus, in all, the petitioner is entitled to a sum of Rs.1,31,000/-(Rupees one lakh and thirty one thousand) as

compensation as against the amount of Rs.51,000/- granted by the Tribunal. Concerning the rate of interest, the Tribunal has granted at 9% per annum, but the same is reduced to 7.5% per annum as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

14. In the result, the appeal is allowed in part, and the order, dated 19-01-2005, in M.V.O.P. No.636 of 2002, passed by the Tribunal is modified, enhancing the compensation to Rs.1,31,000/- (Rupees one lakh and thirty one thousand) from Rs.51,000/- with interest thereon at the rate of 7.5% from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 13, 2015.
Mgr

[\[1\]](#). 2013 ACJ 1403