

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

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**M.A.C.M.A.No.839 of 2005**

**JUDGMENT:**

Dissatisfied with the award of Rs.25,000/- for the injuries sustained by the petitioner by the order dated 01.10.2004 in M.V.O.P.No.754 of 1999 on the file of Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal'), as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioner under Section 173 of the Act.

2. The appellant herein is the petitioner in the original petition before the Tribunal, while respondent Nos.1 and 2 herein, who are the owner and insurer of the lorry bearing No.AP-07-T-2864 respectively, were respondent Nos.1 and 2 respectively.

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

4. The facts in brief are that on 12.07.1999 at about 10.15 PM, while the petitioner was proceeding towards Kothapalem on two wheeler TVS Suzuki, since the driver of the lorry bearing No.AP-07-T-2864, belonging to the 1<sup>st</sup> respondent, drove it in a rash and negligent manner and at high speed hit the petitioner near Pedavadlapudi Railway gate, due to which, the petitioner sustained injuries and the vehicle was damaged. The petitioner claims that he was earning Rs.150/- per day. Due to partial and permanent disability, the petitioner sought Rs.1,50,000/- as compensation.

5. The 1<sup>st</sup> respondent-owner of the vehicle remained *ex parte* before the Tribunal and the 2<sup>nd</sup> respondent-insurance company opposed the claim and pleaded that the claim is bad for non-joinder of the owner and insurer of the TVS Suzuki.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner himself was examined as P.W.1 besides examining Dr. K.Raja Babu as PW.2 and marked Exs.A.1 to A.5. On behalf of the 2<sup>nd</sup> respondent-Insurance Company, none were examined and no

documents have been marked.

7. The Tribunal, on appraisal of evidence let in by the respective parties, held issue No.1 in favour of the petitioner. On issue No.2, basing on the evidence of PW.2 and taking into consideration shortening of leg by one inch and observing that 15% disability spoken to by PW.2 is related to particular limb and not for the entire body of the petitioner, granted a sum of Rs.25,000/- as lump sum amount with interest @ 9% per annum.

8. Aggrieved of the same, the instant appeal is preferred contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and did not take into consideration the disability of 15% spoken to by PW.2 and did not award the amounts under different heads and, therefore, sought to grant balance amount.

9. Heard Sri A. Rajendra Babu, learned counsel for the appellant and Sri Ramachandra Reddy Gadi, learned counsel for the 2<sup>nd</sup> respondent-insurance company. The appeal against the 1<sup>st</sup> respondent was dismissed for default by order dated 03.01.2012. However, dismissal of the appeal for default against the 1<sup>st</sup> respondent is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in ***Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others***, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

10. The short question that arises for consideration is whether the compensation awarded by the Tribunal is just and adequate.

11. Perused the order under challenge and the evidence on record let in by the respective parties. The evidence of PW.2 would show that the petitioner sustained swelling and tenderness and deformity of right thigh and presence of abnormal mobility, fracture of shaft of femur on right side middle 1/3<sup>rd</sup> and he has treated the petitioner by opening reduction and 'K' nailing right femur. Of course, after removal of sutures, the petitioner was discharged on 28.07.1999. According to PW.2, there was shortening of leg by one inch and there was last terminal degrees of flexion of the knee which was limited and that has been the reason why he has estimated the disability at 15% for that particular limb. The Tribunal, of course, right in holding that the percentage of disability was to a particular limb, but not for the whole body, as such, opined to grant lump sum amount. Be that as it may, shortening of leg by one inch with which the petitioner has to suffer, due to the injury he sustained at his prime youth and, therefore, the amount of Rs.25,000/- by all means appears to be on lower side. Therefore, the same is enhanced to Rs.50,000/- from Rs.25,000/-. The petitioner is entitled to a sum of Rs.10,000/- towards extra nourishment. Since, not only the period during which he was treated as inpatient, but, subsequently also the petitioner must have been immobilized at least for six months period, keeping in view that the income of the petitioner at Rs.1,500/- per month, a sum of Rs.9,000/- is granted towards temporary loss of earnings. No medical bills are forthcoming. However, towards transport charges and attendant charges, an amount of Rs.5,000/- is granted. Thus, the petitioner is totally entitled to a sum of Rs.74,000/- as against Rs.25,000/- granted by the Tribunal. So far as interest is concerned, 7.5% per annum is granted as per the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***.

12. In the result, the appeal is allowed in part and the award and decree dated 01.10.2004 passed by the Tribunal in M.V.O.P.No.754 of 1999 is modified, enhancing the compensation to Rs.74,000/- from Rs.25,000/-, with interest at the rate of 7.5% per annum from the date of petition till realization, as against 9% per annum granted by the Tribunal, on the entire compensation, as per the decision of the Hon'ble Apex Court in ***Rajesh's case*** (Supra 1). There shall be no order as to costs.

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

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**A. SHANKAR NARAYANA, J**

Date: 27.02.2015

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