

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.802 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.30,000/- towards compensation as against the claim for Rs.1,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988, seeking enhancement of the same, claimant preferred this Civil Miscellaneous Appeal against the order and decree, dated 29-12-2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Vizianagaram, in O.P. No.424 of 2002

2. The appellant herein is the claimant (petitioner) in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer, respectively, of the Van bearing No.AP-31-V-5425 that involved in the accident, are respondent Nos.1 to 3, respectively.

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

4. The facts, in brief, are that on 03-03-2002 at about 11-45 a.m., while the claimant, who was ten (10) years

old, was proceeding on his cycle to his village on the left side of the road, near Chintaladimma Junction, a Van bearing No.AP-31-V-5425 hit him, resulting fractures to his left leg, other injuries to his person and sustained permanent disability, and, therefore, sought to grant a sum of Rs.1,00,000/- against respondent Nos.1 to 3.

5. Respondent Nos.1 and 2, who are driver and owner of the van that involved in the accident, remained *ex parte* in the O.P. before the Tribunal.

6. The 3rd respondent, insurer of the van, contested the claim putting-forth various claims requiring the claimant to prove the allegations levelled in the petition and prayed to dismiss the claim petition.

7. The Tribunal framed four (4) issues in the direction of fixing responsibility for the accident. During enquiry, since the claimant being minor, his father was examined as PW.1 and Dr. B. Udaya Kumar as PW.2 and marked Exs.A-1 to A-7 besides Ex.X-1 case sheet. On behalf of the respondents, no witnesses were examined except marking a copy of the insurance policy of the van that involved in the accident as Ex.B-1.

8. On issue No.1, the Tribunal, on appraisal of evidence on record, more particularly, Exs.A-1 to A-4, recorded a finding that due to rash and negligent driving of driver of the van, the accident had occurred. On issue

No.2, based on the evidence of PW.2, the doctor, who, on the basis of X-ray (Ex.A-6), has stated that both bones of left leg of the claimant are united in mal-position, and, therefore, he cannot sit in cross-legged position and squat properly, and assessed the disability at 15% by issuing Ex.A-7 disability certificate, the Tribunal granted a sum of Rs.20,000/- towards partial permanent disability, Rs.6,000/- towards pain and suffering, Rs.4,000/- towards medical expenses, and, thus, granted a total sum of Rs.30,000/- towards compensation.

9. It is the aforementioned order under challenge by the claimant contending in the grounds of appeal that the Tribunal granted meagre compensation despite the fact that there was mal-union of fracture and permanent disability, and, therefore, sought to grant the balance compensation.

10. Heard Sri Jayanti S.C. Sekhar, learned counsel for the appellant, and Smt. A. Jayanthi, learned counsel for respondent No.3 - insurance company.

11. Respondent No.1, who is driver of the van, is shown in the cause title of the appeal as not a necessary party.

12. Despite service of notice, none appears on behalf of respondent No.2, owner of the van.

13. Perused the order under challenge and the evidence on record.

14. The fact that PW.2's evidence would prove the fracture of both bones of left leg of the claimant and 15% permanent disability, was accepted by the Tribunal and granted Rs.20,000/-, but, it appears to be on lower side when kept in view, the sufferance of the petitioner as he has to bear with the permanent disability through out his life, and, therefore, the same is enhanced to Rs.25,000/- from Rs.20,000/-. The amount of Rs.6,000/- granted by the Tribunal towards pain and suffering does not warrant interference. It is no doubt true, Rs.4,000/- granted by the Tribunal towards purchase of medicines is without there being any medical bills, however, towards purchase of medicines, transport to hospital and extra-nourishment, the amount of Rs.4,000/- granted by the Tribunal appears to be not reasonable.

So far as extra-nourishment is concerned, a sum of Rs.5,000/- is granted, treating Rs.4,000/-, granted by the Tribunal, towards medicines, transport and incidental charges. Thus, the claimant is entitled to a total sum of Rs.40,000/- towards compensation with interest at 7.5% per annum through out as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

15. Thus, the claimant is entitled to a total compensation of Rs.40,000/- (Rupees forty thousand only) as against Rs.30,000/- awarded by the Tribunal, and the same is accordingly awarded, with interest at 7.5% per annum, on the entire compensation, from the date of petition till realisation.

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal,
by enhancing the compensation as indicated above.
There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 11, 2015.

PV

[\[1\]](#) 2013ACJ1403 = 2013(4)ALT35