

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.2972 of 2005

JUDGMENT:

Dissatisfied with the award of Rs.74,250/- as compensation granted by the order dated 19.07.2005 in M.O.P.No.38 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Vizianagaram (for short, 'the Tribunal'), as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the petitioner in a road accident, instant appeal is preferred under Section 173 of the Act, seeking enhancement of compensation.

2. The appellant herein is the petitioner, while the respondent Nos.1 to 3, who are the driver, owner and insurer of the lorry bearing registration No.ATK 7457, respectively, were respondent Nos.1 to 3, respectively, in the original petition.

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 02.08.1989, the petitioner was returning home on his bicycle from market at Vizianagaram and when he reached a place near R.T.C Complex, a lorry bearing registration No.ATK 7457 being driven by its driver in a rash and negligent manner at high speed dashed the bicycle, due to which, the petitioner fell down and received serious injuries to left leg and left ankle and other injuries on his person. He was shifted to M.R. Government Hospital, Vizianagaram and he was treated as

inpatient for 55 days and incurred expenditure of Rs.15,000/-. After discharge, he attended as outpatient for treatment and his toe was amputated, on account of which his future prospects are affected. The concerned Station House Officer registered a case in Crime No.43 of 2005 under Section 338 of I.P.C. against the lorry driver. The petitioner, therefore, sought a total sum of Rs.2,00,000/- as compensation under Section 166 of the Act.

5. Respondent Nos.1 and 2, who are the driver and the owner of the lorry, remained *ex parte* before the Tribunal. Respondent No.3-insurer of the lorry opposed the claim by raising various pleas, which are unnecessary to advert to in this appeal.

6. Basing on the said pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1, besides examining the Medical Officer-Dr.A.Sreeramamurthy as P.W.2, and marked Exs.A1 to A10, X1 and X2 to substantiate his claim; whereas, on behalf of respondent No.3, no witnesses were examined, but Xerox copy of certificate of insurance was marked as Ex.B1.

7. The Tribunal, on an analysis of the evidence let in by the parties, recorded a finding that due to rash and negligent driving of the lorry driver, the accident had occurred and, thus, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal held that the petitioner is entitled to compensation. On issue No.3, while determining the compensation, since the petitioner was 15 years old on the date of accident, the Tribunal has taken the notional income of the petitioner as Rs.15,000/- as provided under the Second Schedule to Section 163-A of the Act and applied the multiplier "18" and, basing on the evidence of the Medical Officer, taken the disability at

45% for one lower limb and considered the disability as $\frac{1}{6}$ th of the entire body and, thus, arrived at Rs.20,250/- (Rs.2,70,000 x 45% x $\frac{1}{6}$) and awarded the same towards loss of earnings. The Tribunal, probing into other aspects, awarded a sum of Rs.15,000/- towards injury; Rs.10,000/- towards shock, pain and suffering; Rs.4,000/- towards hospital, medical, transport, extra-nourishment, attendance and other incidental expenses; Rs.20,250/- towards loss of earnings, which was referred to above, and Rs.25,000/- towards permanent and partial disability, loss of prospects of life, etc., and thus, granted a total sum of Rs.74,250/- with interest at 9% per annum from the date of petition till the date of deposit.

8. Having dissatisfied with the compensation granted by the Tribunal, the petitioner preferred the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record and ought not to have applied $\frac{1}{6}$ th amount of Rs.1,21,500 deduction, having observed that there was 45% disability sought to grant the balance amount.

9. Heard Sri G.Rama Gopal, learned counsel for the appellant-petitioner, and Sri P.Phalguna Rao, learned Standing counsel for respondent No.3.

10. The instant appeal was dismissed for default by the order dated 05.01.2012 against respondent Nos.1 and 2, but the said dismissal would not affect the determination of the question involved herein in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[1], 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."

11. As seen from the material available on record, initially the claim was laid by the petitioner in 1989 without being represented through next friend. On that ground, it was dismissed by the Tribunal. When the matter was carried in appeal to this Court, on the very same ground that the minor is incompetent to maintain any claim in a Court of law, the same was dismissed, however granting liberty to file a fresh claim petition. Thus, M.O.P.No.38 of 2002 came to be filed.

12. So far as the findings recorded by the Tribunal on issue No.1 is concerned, it does not require any consideration, in view of the fact that the appellant is the claimant, but not the Insurance Company.

13. With regard to findings on issue Nos.2 and 3, there is no need to probe into the manner, in which the compensation was determined for the injury. Though, there has not been any argument or counter argument on respective sides for enhancement or to maintain the amount awarded respectively, a thorough evaluation of

the process of reasoning adopted by the Tribunal would show that the amounts granted against certain heads are on lower side. So far as the amount of Rs.20,250/- granted by the Tribunal towards loss of earnings (future), the same has to be maintained and is maintained. But, the amount of Rs.25,000/- granted towards loss of prospects of life, loss of prospects of profession, loss of amenities of life, loss of enjoyment of life, loss of opportunities of life, (economical and social) and loss of expectation of life and social disability, warrants enhancement, since the petitioner sustained crush injury of left foot with traumatic amputation of great toe. Therefore, the same is enhanced to Rs.40,000/-.

14. The amount of Rs.15,000/- awarded towards injury, as such, also requires enhancement when kept in view, that the injury sustained is the crush injury to the foot and, therefore, enhanced to Rs.25,000/-. Towards shock, pain and suffering, a sum of Rs.10,000/- was granted. The same also requires enhancement when kept in view, the nature of injury sustained by the petitioner and the suffering he had undergone and, therefore, it is enhanced to Rs.20,000/-. The amount of Rs.4,000/- granted towards Hospital, medical, transport, extra-nourishment, attendant's and other incidental expenses is very low, as towards extra-nourishment itself, the petitioner gets substantial amount and, therefore, the same is enhanced to Rs.10,000/-.

15. Thus, the petitioner is entitled to a total sum of Rs.1,15,250/- (Rupees one lakh fifteen thousand two hundred and fifty only) as against Rs.74,250/- granted by the Tribunal, towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount granted by the

Tribunal, but on the enhanced amount of Rs.41,000/-, interest is restricted to 7.5% per annum from the date of petition till realization as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2].

16. Accordingly, the appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

**JUSTICE A.SHANKAR
NARAYANA**

10.12.2015
v v

^[1] 2001(1) ALT 495 (D.B.)

^[2] 2013 ACJ 1403