

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No. 122 OF 2011

-

-

JUDGMENT:

Having got dissatisfied with the award of Rs.1,67,000/- as compensation against the claim of Rs.4,00,000/- filed under Section 166 of the Motor Vehicles Act by the order dated 01.11.2001 in M.V.O.P.No.893 of 1999, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Kadapa, the instant appeal is preferred seeking enhancement.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

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

4. The facts in brief are that on 23.02.1999, at about 08.30 a.m., while the petitioner was returning to his house from Cooperative Colony, Kadapa and passing through Saraswathi Vidya Mandir main gate road towards Chinnachowk main road, when reached cross road junction, the driver of the jeep bearing No. A.P. 04 B 3465 drove it in rash and negligent manner at high speed from southern side and dashed a Luna due to which the petitioner became unconscious by receiving grievous injuries. He was immediately shifted to Government Hospital, Kadapa for treatment and later shifted to Apollo Hospital, Madras for better treatment. According to him, he has taken treatment as in-patient for more than one month and he was kept in Intensive Care Unit for 14 days. He states that he spent Rs.1,10,000/- towards his treatment, medicines and extra nourishment and that he went to Madras for three times for medical

check up and incurred Rs.9,000/- towards taxi hire charges and also spent Rs.1,000/- towards consultant charges in Apollo Hospital and Rs.4,000/- towards attendant charges.

5. The first respondent, owner of the vehicle remained *ex-parte* and the second respondent, Insurance Company opposed the claim raising various pleas and also stating that the injuries sustained by the petitioner would not lead to any permanent disability. It is also stated that the petition is bad for non-joinder of necessary party i.e., Insurance Company with which the Luna was insured, hence sought to dismiss the claim.

6. Basing on the said pleadings, the Tribunal filed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as PW-1, and examined Dr.G.Venkata Subbaiah as PW-2 and marked Exs.A1 to A9, as regards his entitlement for compensation as claimed. On behalf of the respondents, no witnesses were examined and no documents were filed.

7. The Tribunal on perusal of evidence on record through PW-1 supported by Exs.A1 to A3 which are certified copies of First Information Report, Wound Certificate and charge sheet respectively, held issue No.1 in favour of the petitioner.

8. On issue No.2, accepting 40% disability assessed by P.W.2 as in Ex.A4 who has also asserted in his evidence, taking age of the petitioner as 60 years on the date of accident and fixing the monthly earnings as pension at Rs.1,500/- or the annual income at Rs.18,000/- applying the multiplier of '5' arrived at Rs.90,000/- and 40% thereof towards loss of earning capacity at Rs.36,000/-, and awarded the same besides granting Rs.25,000/- towards pain and suffering and Rs.20,000/- towards attendant charges and extra nourishment, Rs.70,000/- towards Ex.A9, medical bills and, thus, arrived at a total sum of Rs.1,66,900/- but rounded it off to Rs.1,67,000/- with interest @ 9% per annum giving suitable directions as regards deposit and withdrawal of compensation.

9. It is the aforesaid order which is under challenge in the said appeal on the ground that meagre compensation was granted contending that the Tribunal was not correct in fixing monthly income at Rs.1,500/- and the Tribunal ought to have taken Rs.3,000/- as the monthly income and therefore sought to grant the

balance amount.

10. Heard Sri K.G.Krishna Murthy, learned counsel for the appellant, and Sri N.Parameshwara Reddy, learned counsel for the second respondent, Insurance Company. Despite service of notice on the first respondent, none appears for him.

11. Perused the order and material on record.

12. The finding recorded by the Tribunal fixing the monthly earnings at Rs.1,500/- or annual income at Rs.18,000/- cannot be faulted with for the reason that despite the fact that the petitioner being pensioner has not chosen to file either pension payment order or at least the statement of account from his Bank, in case he has authorised any Bank to receive his pension. Therefore, it does not warrant interference. So far as the age of the petitioner is concerned, the Tribunal has taken 60 years and the same is also not in dispute. Even the 40% disability accepted by the Tribunal is based on the evidence of PW2 and Ex.A4, which does not warrant interference. So far as the multiplier is concerned, Tribunal adopted '5' taking the age of the petitioner as 60 years. However, as per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**, for the age group of persons between 56 and 60 years, the relevant multiplier provided is '9'. Therefore, in place of '5', the multiplier '9' has to be applied which works out to Rs.1,62,000/- and 40% thereof works out to Rs.64,800/- as against Rs.36,000/- arrived at by the Tribunal. Therefore, the amount of Rs.36,000/- granted towards permanent disability, in proportion to 40%, is enhanced to Rs.64,800/-. Concerning other amounts i.e., Rs.25,000/- towards pain and suffering, Rs.20,000/- towards attendant charges and extra nourishment, Rs.70,000/- towards medical expenses awarded by the Tribunal, they are confirmed. Towards transport charges, the Tribunal has granted Rs.5,000/- and the same is enhanced to Rs.10,000/- as claimed. Thus, the petitioner is totally entitled to Rs.1,89,800/- as against Rs.1,67,000/- granted by the Tribunal, however, with interest at the rate of 7.5% per annum from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, as against 9% per annum awarded by the Tribunal.

13. Accordingly, the appeal is allowed in part. There shall be no order as to

costs.

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

A. SHANKAR NARAYANA, J

DATE: 27.03.2015.

vhb