

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 744 of 2005

Judgment:

Dissatisfied with the award of Rs.41,800/- towards compensation, as against Rs.2,00,000/- claimed under Section 166 of the Motor Vehicles Act, 1988 read with Rule 455 of the Rules framed there under, seeking enhancement of the same, claimant preferred this Civil Miscellaneous Appeal against the order, dated 03.01.2005, in M.V.O.P. No. 180 of 2000, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum – IV Additional District Judge, East Godavari, Kakinada.

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

3. Coming to the facts, the petitioner, on 17.01.1999, after getting down a lorry, was proceeding on the left side of the road at Gavarayya Koneru village. During which time, the offending vehicle came at high speed and hit her and her right foot was crushed resulting in grievous injuries. She initially claimed Rs.1,25,000/- and later enhanced the same to Rs.2,00,000/-.

4. The first and second respondents i.e., driver and owner of the offending vehicle remained *ex parte*. The third respondent - Insurance Company opposed the claim.

5. The Tribunal, based on the pleadings, framed two (2) issues about the responsibility for the accident. During enquiry, claimant herself was examined as PW.1 and Dr. B. Pardhasaradhi, Asst. Professor of Orthopaedics, Govt. General Hospital, Kakinada was

examined as PW.2 and exhibited four (4) documents as Exs.A-1 to A-4 as to her entitlement for the compensation amount. On behalf of the 3rd respondent – Insurance Company, none were examined but the copy of insurance policy was marked as Ex.B-1.

6. The Tribunal, on appraisal of the evidence of PW.1 and Exs.A1 to A4, answered issue No.1 in favour of the petitioner. On issue No.2, taking into consideration the injuries sustained by the petitioner awarded Rs.4,800/- as against the claim of Rs.5,000/- towards loss of earnings, Rs.1,000/- towards extra nourishment, Rs.6,000/- towards mental agony and pain and suffering, Rs.30,000/- as against the claim of Rs.75,000/- towards loss of earnings and Rs.55,000/- towards grievous injuries and disability on the ground that no permanent disability certificate is forthcoming and PW.2 has not spoken about it. Thus, a total sum of Rs.41,800/- was awarded by the Tribunal with interest at 9% per annum as against the claim of Rs.2,00,000/-.

7. Claiming enhancement of compensation, the instant appeal is preferred contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence on record, more particularly, the evidence of PW.2 and that, though, the claimant sustained permanent disability and was treated for a period of two months as inpatient, very meagre amount was awarded towards compensation and, therefore, sought to enhance the compensation by granting the balance amount.

8. Heard Sri O. Manohar Reddy, learned counsel for the appellant, and Sri Kota Subba Rao, learned counsel for the third respondent – Insurance Company. The claim against the first respondent was dismissed for default on 02.01.2012 and there is no representation for the second respondent. It is stated that the dismissal of the instant appeal against the first respondent is of no consequence in view of the decision of the Division Bench of this Court in **Meka Chakra Rao v.**

Yelubandi Babu Rao @ Reddemma^[1].

9. The evidence of medical officer, who is examined as PW.2, would show that the petitioner sustained (1) lacerated injury over the medial aspect of right foot exposing the underlying soft tissues and bone, (2) avulsion injury to the right ear and (3) lacerated injury over the right temporal region. According to PW.2, X-ray reveals fracture of right foot first metatarsal bone, fracture of medial cuneiform, fracture of navicular, fracture of cuboid and fracture calcaneum of right foot and PW.1 was admitted in the hospital on 18.01.1999 and discharged on 10.03.1999. Thus, according to PW.2, PW.1 sustained fractures and she was applied POP and advised to take bed rest for two months. Ex.X1 is the case sheet with X-ray. Of course, nothing is elicited in the cross-examination of PW.2 except to show that the entire treatment was free of cost.

10. Turning to the amounts granted by the Tribunal, the amount of Rs.4,800/- granted towards loss of earnings is maintained. Towards extra nourishment, the Tribunal granted Rs.1,000/-, but keeping in view, the nature of injuries sustained by the petitioner, Rs.5,000/- would be reasonable and, therefore, granted Rs.5,000/- as against Rs.1,000/- granted by the Tribunal. Towards medical expenses the petitioner claimed Rs.30,000/- but the Tribunal has not granted any amount towards medical expenses stating that as per the evidence of PW.2 the entire treatment was free of cost and no medical bills are filed by the petitioner. Since the treatment was free of cost no amount can be granted towards medical expenses. Towards pain and suffering and mental agony the Tribunal granted Rs.6,000/- and it is enhanced to Rs.10,000/-. Towards five fractures and two lacerated injuries the Tribunal granted Rs.30,000/-, whereas the petitioner claimed Rs.75,000/- towards loss of earning power and Rs.55,000/- towards grievous injuries and

disability. Admittedly, no disability is forthcoming as rightly observed by the Tribunal and PW.2 admitted that PW.1 received five fractures and wounds were treated conservatively by applying POP. Keeping in view, the five fractures and two lacerated injuries certainly, they would have caused inconvenience for the petitioner for considerable length of time. Therefore, the amount is enhanced to Rs.50,000/- as against Rs.30,000/-. Thus, the petitioner is totally entitled to Rs.69,800/ as against Rs.41,800/- granted by the Tribunal, but, however, rate of interest is limited to 7.5% p.a., as against 9% p.a., against the entire amount of Rs.69,800/- granted.

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

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

A. SHANKAR NARAYANA, J

Date: 23.02.2015
Nsr

[\[1\]](#) 2001(1) ALD 453 (DB)