

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.847 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.1,54,250/- granted by the Tribunal towards compensation for the injuries sustained by the petitioner, the instant appeal is preferred seeking enhancement. The Tribunal by the order dated 05.03.2005 in O.P.No.543 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge(Fast Track Court) at Kadapa, granted the said amount as against the claim of Rs.1,50,000/-, laid under Section 166 of the Motor Vehicles Act, 1988.

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

3. The facts in brief are that on 05.02.2002 at about 7.45 a.m., the petitioner and others boarded an auto bearing registration No.AP-04-T-6285 from Chennur bus stand to go to Kothapalli for coolie work, when it reached at sugar factory having crossed the road from Kadapa to Mydukur, since the driver of the auto driven it in a rash and negligent manner and at high speed, he lost control over the vehicle, resulting the vehicle turning upside down and the petitioner sustained grievous injuries. The petitioner was immediately shifted to Government Hospital at Kadapa and after the treatment, she herself has taken treatment at Puttur and also at Chennur in Kadapa District. She claims that she spent huge amount towards medical expenses and she was 23 years old doing coolie work earning Rs.2,500/- per month. Therefore, sought Rs.1,50,000/- as compensation against respondents 1 and 2, who are the owner and insurer of the vehicle respectively.

4. First respondent remained *ex parte*. Second respondent contested the claim raising various pleas including violation of terms and conditions of policy on the ground that the driver of the auto did not possess valid driving licence at the relevant time, and on that ground sought to exonerate it from its liability and while stating that the claim was excessive sought to dismiss the claim petition.

5 . The Tribunal has framed three issues in the direction of fixing responsibility for the accident. During enquiry, the claimant was examined as PW.1 and the Doctor was examined as PW.2 and Exs.A-1 to A-13 were marked as regards entitlement for compensation by the claimant. On behalf of the insurer, one of their employees was examined as R.W.1, and Exs.B1 and B2 were marked.

6. The Tribunal, after appraisal of evidence of P.W.1 and Exs.A1 and A3, certified copies of FIR and charge sheet respectively, held issue No.1 in favour of the claimant. The Tribunal did not agree with the insurance company as to the violation complained by it. On issue No.2 as to the determination of compensation, the Tribunal while observing that since the petitioner is a woman labourer, she would be earning Rs.50/- per day, but, however, fixed the income at Rs.9000/- per annum and applied multiplier '17' towards partial permanent disability of 25% basing on the evidence of P.W.2, medical officer, who treated the claimant and worked out the loss of earning capacity at Rs.38,250/-. Besides the same, a sum of Rs.5,000/- is awarded towards medical expenses, extra nourishment and attendant charges, Rs.5,000/- towards pain and suffering and Rs.1,000/- towards transport expenses. Thus, a total sum of Rs.54,250/- with interest at 9% per annum, was granted towards compensation.

7. Aggrieved of the above order, the instant appeal is preferred by the claimant contending in the grounds of appeal that the Tribunal ought to have taken the minimum wages of labourer at Rs.100/- per day as per the minimum wages fixed under the Minimum Wages Act, but the Tribunal, some how, did not properly appreciate the evidence with regard to the disability of the claimant and erred in calculating the same at 25%.

8 . Heard Sri K.Murali Krishna, learned counsel for the claimant (appellant), and Sri A.Rama Krishna Reddy, learned counsel for the respondent. The instant appeal was dismissed against R1 by order dated 03.01.2012. However, it is of no consequence in deciding the request to enhance compensation as observed by a division bench of this Court in **MEKA CHAKRA RAO v. YELUBANDI BABU RAO @ REDDEMMA AND OTHERS**. During the course of arguments, learned counsel for the insurance company – second respondent contends that the insurance company did not file any appeal challenging the findings recorded by the Tribunal as regards violation of conditions of policy.

9 . It is submitted by the learned counsel for the appellant that the Tribunal despite observing that the woman coolie would receive Rs.50/- per day but, somehow, taken the annual income as Rs.9000/- as against Rs.18,000/- and, therefore, sought to calculate the compensation towards partial permanent disability taking the annual income at Rs.18,000/-. There is substance in the submission made by the learned counsel, as the Tribunal some how, arrived at Rs.9,000/- per annum as the income of the claimant despite making observation that as a woman agricultural coolie would be earning Rs.50/- per day. In that view of the matter, the amount awarded by the Tribunal towards earning capacity of the petitioner is doubled making it to Rs.76,500/-. So far as the amounts under other heads are concerned, since the Tribunal has granted reasonable amounts, no enhancement is required and they are maintained. Thus, the petitioner is totally entitled to Rs.92,500/- however, with interest at 7.5% per annum by reducing the same from 9% 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**.

10 . Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation from Rs.54,250/- to Rs.92,500/- and reducing the interest from 9% to 7.5% as stated supra. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 13, 2015.

Rns