

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.2833 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.58,000/- towards compensation as against the claim of Rs.1,50,000/- laid under

Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), petitioner preferred this Civil Miscellaneous Appeal under Section 173 of the Act, against the order and decree, dated 06.06.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional Chief Judge, City Civil Court, Hyderabad, in O.P. No.1853 of 2001, seeking enhancement of compensation.

2. The appellant herein is the petitioner before the Tribunal in the O.P., while respondent Nos.1 to 3, who are owner, insurer, and said to be subsequent owner of the DCM Van bearing No.AP-10-K-1250 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 would show that on 02.05.2001 at

about

10.30 a.m., while the petitioner was standing on the footpath at State Bank of Hyderabad, Vemulavada Branch, since the bank was not opened by then and waiting to draw the pension amount, a DCM Van bearing No.AP-10-K-1250 driven by its driver, while reversing it, hit him, due to which, he sustained injury to his right leg and other parts of his person. He was immediately shifted to Government Hospital, Sirisilla, where he was treated as in-patient. From there, he was shifted to Susrutha Hospital, Malakpet, Hyderabad. He claims that even on the date of filing the claim petition, he was undergoing treatment. It is his case that he was earning Rs.3,000/- per month as a private servant and contributing the same to his family and due to the injuries, he was advised to take bed rest and that he incurred Rs.45,000/- towards medical expenses, and, thus, sought the aforesaid amount towards compensation.

5. Respondent No.1, owner of the DCM Van that involved in the accident, though filed counter, remained *ex parte* through out the proceedings in the O.P. before the Tribunal.

6. Respondent No.2, insurer of the DCM Van, filed counter opposing the claim.

7. Respondent No.3, who said to be the

subsequent owner of the DCM Van, also remained *ex parte*.

8. During enquiry, petitioner examined himself as PW.1 besides examining one Y. Surender Rao as PW.2 and marked Exs.A-1 to A-9. On behalf of the insurer, no oral evidence was adduced, but a copy of the insurance policy of the vehicle involved in the accident was marked as Ex.B-1 on consent.

9. On issue No.1, the Tribunal has recorded a finding in favour of the petitioner.

10. On issue No.2, relying on the evidence of PW.2 and the description of injury as shown in Ex.A-3, granted Rs.25,000/- towards pain and suffering, Rs.10,000/- towards inconvenience with which the petitioner was sustaining 20% disability as shown in Ex.A-6 disability certificate and spoken to by PW.2, who issued the said certificate; Rs.10,000/- towards medical expenses as against Rs.45,000/- based on medical bills, Rs.10,000/- towards future medical expenses and Rs.3,000/- towards travelling expenses, and, thus making a total of Rs.58,000/- with interest at 6% per annum as against 18% per annum sought for by the petitioner, making respondent Nos.1 to 3 liable jointly and severally to satisfy the decretal amount.

11. Heard Sri T. Sudhakar Reddy, learned counsel for the petitioner (appellant).

12. Despite service of notice, no representation for respondent Nos.1 and 3.

13. Despite service of notice, none appears for respondent No.2, insurer.

14. Perused the order and decree under challenge and the evidence on record.

15. The fact that the petitioner has sustained fracture of right femur is borne out from Ex.A-3 - certified copy of accident information report as well as the evidence of PW.2 and even from Exs.A-5 and A-9, discharge summary and hospital bill issued by Susrutha Hospital, Malakpet, Hyderabad, and since the Tribunal itself has observed that the petitioner was unable to move at least for a period of four (4) months, the petitioner is entitled to Rs.35,000/- as against Rs.25,000/- awarded by the Tribunal towards pain and suffering and the injury as such. The Tribunal has granted Rs.10,000/- towards 20% partial permanent disability, which is shortening of right lower limb by two (2) centimetres. The Tribunal has not resorted to any structural formula. The petitioner appears to have served as Municipal Commissioner (retired) and 65 years old on the date of accident. Even otherwise, he claims that privately he was working and earning

Rs.3,000/- per month, but nothing is forthcoming to substantiate that stand. Even otherwise, keeping in view, shortening of right lower limb by 2 CMs., the amount of Rs.10,000/- granted by the Tribunal is enhanced to Rs.25,000/-. The Tribunal has granted Rs.10,000/- towards medical expenses. Since the evidence of PW.2 proves Ex.A-7 and A-8, the amounts of Rs.34,625/- and Rs.9,637/- shown thereunder, are granted as against Rs.10,000/- granted by the Tribunal. The amount of Rs.10,000/- granted by the Tribunal towards future medical expenses for removal of implants is maintained. The amount of Rs.3,000/- granted towards travelling expenses is also maintained. An amount of Rs.5,000/- is awarded towards extra-nourishment for which the Tribunal has not granted any amount. Thus, the total compensation works out to Rs.1,22,262/- and the same is rounded off to Rs.1,22,260/-.

16. Thus, the petitioner is entitled to a total compensation of Rs.1,22,260/- (Rupees four lakhs four thousand three hundred and seventy five only) as against Rs.58,000/- awarded by the Tribunal, and the same is accordingly awarded. However, the rate of interest granted by the Tribunal at 6% per annum is increased to 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others** ^[1], from the date of petition till realisation.

17. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 23, 2016.

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