

**THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.CMA.No.556 OF 2009**

**JUDGMENT:**

Feeling dissatisfied with the award of Rs.25,000/- as compensation by order and decree, dated 28.02.2001, in M.V.O.P.No.560 of 1994 on the file of Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Chittoor, as against the claim of Rs.6,40,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the petitioner in the said O.P. preferred the present appeal, under Section 173 of the Act, seeking enhancement of compensation.

2. The fact situation that led to sustaining injuries by the appellant is not in dispute between the parties in the present appeal. Therefore, there is no need to advert to the relevant details even.

3. Heard Sri P.V. Vidya Sagar, learned counsel for the appellant, and Smt. P. Satya Manjula, learned counsel for respondent No.3 – Oriental Insurance Company Limited.

4. Despite service of notice on respondent No.6 – United India Insurance Company Limited, none appears for it. So far as other respondents are concerned, the present appeal stood dismissed for default against them, but, however, it would make no difference in adjudicating upon the request made herein.

5. Based on the pleadings, the Tribunal framed three issues. During enquiry, the appellant examined herself as PW.2, besides examining the professor of Orthopaedics in J.S.S. Hospital, Mysore, where PW.2 has undergone treatment, as PW.1, and got marked Exs.A1 to A7 to substantiate the claim laid. On behalf of the respondents, atleast, the contesting respondents, no witnesses were examined, but copy of the Insurance Policy issued by respondent No.3–Insurance Company was marked as Ex.B1, on consent.

6. The Tribunal found issue No.1 in favour of the appellant. It has answered issue No.2 also in favour of the appellant, but, however, while determining the compensation, to which the appellant is entitled, the Tribunal, referring to the rulings mentioned in paragraph No.9 of the order under challenge, somehow, awarded Rs.20,000/- towards permanent disability, pain and suffering, and multiple injuries, and Rs.5,000/- towards medical, transport, extra nourishment, attendant, lodging expenses etc., thus, making a total of Rs.25,000/- with interest at 12% per annum. So far as the liability to pay the compensation is concerned, the Tribunal apportioned it directing respondent Nos.1 to 3 to pay 60% of the compensation amount and the rest of 40% by respondent Nos.4 to 6 jointly and severally.

7. The aforesaid order and decree are questioned in the instant appeal on the ground that the Tribunal has granted inadequate compensation, mainly stating that the evidence on record, both, oral

and documentary, was not properly appreciated by the Tribunal, that the fixation of compensation by the Tribunal is not commensurate with the seriousness of the injuries sustained by the appellant and that the Tribunal did not resort to structural formula and, therefore, sought to grant the balance amount.

8. Though, the learned counsel for respondent No.3 did resist the request in the instant appeal for enhancement of compensation by supporting the order and decree under challenge, but, even a cursory glance at the order under challenge would reflect that it is not in tune with the well established principles for determining the compensation in the direction of arriving at just and adequate compensation. No reasons are found in the order under challenge as to how the Tribunal assessed the permanent disability, pain and suffering etc., and awarded Rs.20,000/- and the other sum of Rs.5,000/- towards special damages.

9. Turning to the injuries sustained by the appellant, as could be gathered from the evidence on record, the appellant, initially, was taken to Government Hospital, Chittoor, and then she was referred to C.M.C. Hospital, Vellore, where, for certain period, she was treated and then she went to J.S.S. Hospital, Mysore, where she was treated as outpatient for a period of 45 days. The Medical Officer of J.S.S. Hospital has issued Ex.A4 – medical certificate assessing the disability sustained by the appellant at 10%. The appellant, to show

that she was treated in C.M.C. Hospital, Vellore, filed Ex.A2. The description of injury shown therein was fracture of left clavicle, which was a grievous injury. She was then treated in J.S.S. Hospital, Mysore, as evidenced by Ex.A4 issued on 29.08.1994, showing that the appellant sustained fracture of left clavicle and she was treated with immobilisation. The assessment of disability shown in Ex.A4 is thus:

“Disability

1. Mild to moderate restriction of motion (L)  
shoulder - 10%.
2. .. Mild malunion of fracture.

Smt. Gangamma has a permanent physical impairment of 10% (Ten percent) with respect to her left upper limb.”

So the 10% disability is with respect to the left upper limb as per Ex.A4. Ex.A5 – medical certificate shows that the appellant was treated as outpatient from 07.12.1993 to 10.01.1994 and, of course, was advised rest.

10. The medical officer of J.S.S. Hospital, Mysore, was examined as PW.1 in the first instance before the appellant - claimant herself stepped into the witness box. Except suggesting to this witness that PW.2 is not suffering from any disability and in order to help PW.2 he has issued the certificate, which was bluntly denied by him, nothing else is brought out to disbelieve the disability spoken to by

PW.1. In fact, the disability was assessed basing on the restriction of her left shoulder movement on account of mal-union of the fracture. In fact, the Tribunal has believed that the appellant sustained 10% disability and awarded Rs.20,000/-, a portion of which relates to the permanent disability.

11. Now turning to whether the amounts awarded by the Tribunal are just and adequate, certainly, it has to be viewed that the Tribunal did not follow the structural formula, despite the fact that the appellant was a Doctor serving in Government Hospital with Rs.5,000/- as monthly earnings and aged 33 years at the relevant time. The relevant multiplier factor for the age group of persons between 31 and 35, as provided in the table formulated by the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation**<sup>1</sup>, is '16'. When multiplier factor '16' is applied, the inconvenience to which the appellant is put would work out to Rs.96,000/- (Rs.5,000/- x 12 x 16 x 10%). This apart, the appellant is entitled to a sum of Rs.10,000/- towards pain and suffering. So far as medical expenses are concerned, Ex.A6 would show that the appellant has spent Rs.1,421.59 ps. Rounding it off to Rs.1,500/-, the same is granted towards medical expenses. Since the appellant was treated in C.M.C. Hospital, Vellore, and, of course, at J.S.S. Hospital, Mysore, and even attended for reviews, a total sum of Rs.5,000/- is granted

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<sup>1</sup> (2009) 6 SCC 121

towards transport charges. Since the appellant was not immobilised, as there was no injury to any of the lower limbs and injury is only to the left shoulder, perhaps, there was no need of any attendant to assist her. However, towards lodging expenses, since she was at Vellore for some time, a sum of Rs.5,000/- is granted, in the absence of any documentary evidence. Towards extra nourishment, she is entitled to Rs.5,000/-. Since the appellant was on leave for 45 days, as per her assertion in the chief examination, which was not questioned in the cross-examination, she is entitled to Rs.7,500/- towards salary for the leave period, which she was constrained to avail in view of the accident she met. Thus, the petitioner is entitled to Rs.1,30,000/- and the same is granted.

12. So far as interest is concerned, the Tribunal has awarded interest at 12% per annum. The same is maintained on the compensation of Rs.25,000/- awarded by the Tribunal. On the enhanced amount, interest at the rate of 7.5% per annum is awarded from the date of petition till realisation, in view of the decision of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**<sup>2</sup>.

13. The liability on the enhanced amount shall be apportioned among the respondents in the same proportion as apportioned by the Tribunal.

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<sup>2</sup> (2013) 9 SCC 54

14. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.25,000/- to Rs.1,30,000/- with interest at 12% per annum on the amount of Rs.25,000/- awarded by the Tribunal and on the enhanced amount at the rate of 7.5% per annum from the date of petition till realisation.

15. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

September 15, 2016.  
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**A. SHANKAR NARAYANA, J**

