

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.463 OF 2009

JUDGMENT:

Seeking enhancement of compensation, the instant Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), is preferred by the petitioner - claimant dissatisfied with the award of Rs.1,20,000/- granted towards compensation by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Vizianagaram, through the order and decree, dated 05.06.2003, in M.O.P. No.50 of 2001, as against the claim for Rs.2,50,000/-, under Section 166 of the Act, for the injuries sustained by him in a road accident.

2. The appellant herein is the petitioner in the M.O.P. before the Tribunal while respondent Nos.1 to 3, who are driver, owner and insurer, respectively, of the lorry bearing No.AP-5-T-2115 that involved in the accident are respondent Nos.1 to 3 respectively.

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

4. The Tribunal passed the order under challenge granting a sum of Rs.1,20,000/- by discarding Ex.A-6

disability certificate issued by the Medical Board basing on the answers given by the medical officer, who was examined as PW.2, in his cross-examination.

The amount granted by the Tribunal for the three (3) fractures was a sum of Rs.36,000/-; a sum of Rs.1,000/- towards a simple injury and Rs.45,000/- towards future operation and the disability besides Rs.38,000/- towards medical expenses, as borne out from Ex.A-5 bunch of medical bills.

5. The aforesaid order is under challenge in the instant appeal seeking to grant the balance amount on the ground that the Tribunal has not properly appreciated the evidence on record and ought to have taken the partial permanent disability as 45% in view of the evidence of PW.2.

6. Heard Sri Venkateswara Rao Gudapati, learned counsel for the petitioner (appellant).

7. No representation for respondent No.3, insurer of the lorry.

8. Though notice was served on respondent No.1, none appears for him.

9. Against respondent No.2, owner of the lorry, the appeal stood dismissed by the order of this Court dated 21.10.2008. However, it makes no difference in deciding

the issue in the instant appeal in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v.**

Yelubandi Babu Rao @ Reddemma^[1].

10. A perusal of the evidence of PW.2 and Ex.A-6 would give an impression that the degrees of restriction for the injuries are not detailed and the reasons as to how 45% partial permanent disability was assessed. On the other hand, the answers given by PW.2 would, in fact, stand adverse to the partial permanent disability, though, one of the answers given by him is incomplete, but it appears from the suggestions made that there was possibility of curing the disability and the same was denied by him. He fairly admits that no scientific data is given in arriving at percentage of disability.

11. In that view of the matter, the finding recorded by the Tribunal in granting Rs.45,000/- towards disability and future operation without resorting to the structural formula cannot be faulted with.

12. The question now is whether the amount granted by the Tribunal is just and adequate?

13. It is not in dispute that the petitioner has sustained the following injuries as mentioned in Ex.A-2:

1. A lacerated injury on back of the skull,

2. Deformity of right elbow and right shoulder,
3. Fracture of right side pelvis and femur
4. Crush injury to left lower leg and bones exposed.

The first three injuries would certainly fetch the petitioner more than Rs.36,000/- granted by the Tribunal. Therefore, including pain and suffering, for the three (3) grievous injuries, an amount of Rs.36,000/- granted by the Tribunal is enhanced to Rs.60,000/-. For the simple injury, the amount of Rs.1,000/- granted by the Tribunal is enhanced to Rs.3,000/-. The amount of Rs.45,000/- granted by the Tribunal towards partial permanent disability is maintained. The amount of Rs.38,000/- granted by the Tribunal towards medical expenses is also maintained.

14. Thus, the petitioner is totally entitled to a sum of Rs.1,46,000/- (Rupees one lakh forty six thousand only) as against Rs.1,20,000/- granted by the Tribunal and the same is accordingly granted. The rate of interest at 9% per annum granted by the Tribunal on the compensation of Rs.1,20,000/- is maintained. However, on the enhanced compensation, it is fixed at 7.5% per annum from the date of petition till realisation, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2].

15. Accordingly, the Civil Miscellaneous Appeal is allowed in part 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

July 20, 2016.

PV

[\[1\]](#) 2001 (1) ALT 495 (D.B.)

[\[2\]](#) 2013ACJ1403 = 2013(4)ALT35