

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2037 OF 2009

JUDGMENT:

The present appeal is preferred by the petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking enhancement of compensation of Rs.3,21,545/- awarded by the learned Chairman, Motor Accident Claims Tribunal - cum - District Judge, Vizianagaram (for short 'the Tribunal'), by order and decree, dated 22-02-2007, in M.O.P. No.383 of 2004 on the ground that it was not just and adequate compensation when compared with the injuries he sustained and the sufferance to which he was put.

2. The appellant herein is the petitioner, while respondent Nos.1 to 3, who are driver, owner and insurer of Jeep bearing registration No.AP 35T 6917, respectively, are respondents as such in MOP before the Tribunal.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in MOP.

4. The fact-situation occurring in the instant case leading to petitioner sustaining injuries and the treatment he had undergone at Government Hospital, Vizianagaram, and Apollo Hospital, Hyderabad, and the surgical interventions held on him are not in dispute. Therefore, there is no need to advert to the fact-situation and the details of surgical interventions and the treatment taken by him.

5. Heard Sri Gudapati Venkateswara Rao, learned counsel for the petitioner, and Mrs. A. Jayanthi, learned standing counsel for respondent No.3 - Insurer. Respondent Nos.1 and 2, though, served with notices, none appears for them.

6. The Tribunal, though, taken the partial permanent disability assessed by the District Medical Board, Vizianagaram at 25%, but, however, without applying structural formula, granted a sum of Rs.1,25,000/- towards the same. To compensate the leave availed by him but for the accident for the leave period of 164 days, a sum of Rs.36,745/- was granted computing at the rate of Rs.6,681/- as net salary per month. The Tribunal has granted Rs.10,000/- towards transport charges. For future surgical intervention for removal of implants basing on the evidence of PW.2, a sum of Rs.10,000/- was granted. A sum of Rs.1,29,800/- was awarded towards medical expenses based on the amounts mentioned in the computerized bill while discarding the amounts shown in manual bills. The Tribunal has also granted a sum of Rs.10,000/- towards pain and suffering. Thus, a total compensation of Rs.3,21,545/- was awarded with interest at 7.5% per annum.

7. In the grounds of appeal, the appellant mainly contends that; the Tribunal having seen the severity of the accident ought to have believed the extent of medical treatment, and also ought to have believed and granted the compensation for the manual medical bills;

the Tribunal instead of reducing the amount sought towards transport expense, ought to have granted the entire amount; having discussed the disability, the Tribunal ought to have applied structural formula and awarded the compensation; and, therefore, sought to grant the balance amount of Rs.3,68,455/-.

8. The learned standing counsel for respondent No.3 - Insurer would contend that what was awarded by the Tribunal was just and adequate, since every component has been considered and whatever ought to be discarded has been discarded and, therefore, the appellant - petitioner is not entitled to further amounts.

9. Perused the order and the evidence on record, both, oral and documentary.

10. As could be seen from the evidence of PWs.2 and 3, more particularly, evidence of PW.2, the petitioner has sustained comminuted open fracture of the right tibia; fracture fibula at lower 1/3rd on the right side and lacerated wound. He was admitted in Apollo Hospital five days after he sustained injuries with infected comminuted open fracture of right tibia. His evidence shows that the petitioner had undergone surgical interventions on four occasions. The relevant details have been adverted to by the Tribunal in paragraph No.8 (b) of the order, and ultimately it was found that there was shortening of leg by half an inch. It is no doubt true, the evidence

of PW.3 proves the disability certificate issued by the District Medical Board showing disability at 25%, which is partial permanent in nature, but, the petitioner being an English Tutor at D.I.E.T. Training Centre, Vizianagaram, there was no reduction in his earnings or any loss of earning capacity. Be that as it may, the Tribunal granted Rs.1,25,000/-, perhaps taking into consideration that the disability at 25% did not have any impact on his future income. Therefore, granting of Rs.1,25,000/- instead of resorting to the structural formula cannot be faulted. Therefore, the amount of Rs.1,25,000/- granted by the Tribunal towards partial permanent disability is maintained. The amount of Rs.36,745/- awarded by the Tribunal towards loss of temporary earnings is maintained.

11. The petitioner has placed railway tickets and taxi tickets for Rs.15,559/- and Rs.6,100/-, respectively, besides motorcycle repair charges of Rs.4,138/-. Of course, to the extent of repair charges of motorcycle spending Rs.4,138/- can be excluded, but the other sums have to be granted. Therefore, a total of Rs.21,659/- is granted as against the amount of Rs.10,000/- awarded by the Tribunal. The amount of Rs.1,29,800/- granted by the Tribunal is maintained. There is no reason to reject the amount of Rs.87,232/-, since there are no manual bills, but the prescriptions are in hand-writing, the other bills are all computerized bills. Therefore, the petitioner is entitled to Rs.87,232/- also. The amount of Rs.10,000/- granted towards future operation is also maintained. The Tribunal has granted a sum of

Rs.10,000/- towards pain and suffering, the same is on lower side when kept in view, the nature of injuries the petitioner sustained and the sufferance he had undergone and, therefore, the same is enhanced to Rs.25,000/-. The Tribunal has not awarded any amount towards extra nourishment and attendant charges. Therefore, towards extra nourishment, a sum of Rs.10,000/- is awarded; and towards attendant charges, a sum of Rs.12,000/- at the rate of Rs.2,000/- per month for a period of six months. Thus, in all, the petitioner is entitled to Rs.4,57,436/- as compensation as against Rs.3,21,545/- granted by the Tribunal.

12. Concerning rate of interest, the Tribunal awarded it at 7.5% per annum. The same is maintained, even on enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

13. In the result, the appeal is allowed in part, and the order and decree, dated 22-02-2007, in M.O.P. No.383 of 2004, passed by the Tribunal are modified enhancing the compensation to Rs.4,57,436/- (Rupees four lakhs fifty seven thousand four hundred and thirty six) from Rs.3,21,545/- with interest at 7.5% per annum thereon from the date of petition till realization. No order as to costs.

¹. 2013 ACJ 1403

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

September 26, 2016.

Mgr

