

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

**M.A.C.M.A. No.2301 OF 2005**

**JUDGMENT:**

Having got dissatisfied with the amount of Rs.50,000/- granted as compensation by the order dated 19.04.2005 in M.V.O.P. No.482 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Guntur, (for short, 'the Tribunal') as against the claim of Rs.3,00,000/- laid under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the appellant in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of jeep bearing registration No.AP 7T 2781, respectively, are respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 01.12.1999, the petitioner, who was minor at the time of accident, along with his father, returning from Guntur to Ponnur on the

scooter and when they reached Kommur Canal Bridge, a jeep bearing registration No.AP 7T 2781 driven by its driver in a rash and negligent manner in opposite direction and dashed the scooter, due to which, he fell down and received injuries and they were shifted to Government General Hospital, Guntur. The petitioner, represented by his father as next friend, claiming that the petitioner was studying L.M.E. 1<sup>st</sup> year, Allhuda Polytechnic College, Nellore, received fracture injury to his right leg (both bones fractured) and also head injury and he became permanently disabled due to shortening of 1½ inch of his right leg, sought a sum of Rs.3,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the jeep respectively.

5. Respondent No.1-owner of the accident vehicle remained *ex parte* before the Tribunal. Respondent No.2-insurer opposed the claim by raising various pleas. One of the pleas raised by the insurer was that the claim is bad for non-joinder of owner and insurer of the scooter while attributing negligence on the part of the scooterist.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the accident occurred due to rash and negligent driving of the driver of jeep

bearing No.AP-7T-2781?

2. To what compensation the petitioners are entitled and from whom?

3. To what relief ?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr. K.Raja Babu as P.W.2 and marked Exs.A.1 to A.9 to substantiate his claim; whereas, on behalf of the respondents, no witnesses were examined and no documents were marked.

8. The Tribunal, on analyzing the evidence let in by the petitioner, found fault with the driver of the jeep and held issue No.1 in favour of the petitioner; and on issue No.2, having found that the petitioner sustained fracture of shaft of femur right middle third and compound type-2 fracture of both bones of right leg middle third and that he was operated thrice on 01.12.1999, 11.01.2000 and 18.01.2000 and even noted that there was 1½ inch shortening of right lower limb, but however, has not considered the disability at 35% as spoken to by P.W.2, granted a total sum of Rs.50,000/- as compensation on the ground that the petitioner was not an earning member.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal did not properly appreciate the evidence

of P.W.2 and the nature of injuries sustained by the petitioner and partial permanent disability sustained on account of shortening of 1½ inch of his right lower limb and gross stiffness of right knee joint, and, therefore, sought to grant balance amount.

10. Heard Sri B.Parameswara Rao, learned counsel for the appellant-petitioner, and Sri Ravi Shankar Jandhyala, learned counsel for respondent No.2-Insurance Company. Appellant has endorsed in the cause title of the grounds of appeal that respondent No.1 is not a necessary party. In fact, respondent No.1 remained *ex parte* before the Tribunal and suffered decree. Therefore, his absence would not make any difference in deciding the controversy herein.

11. As seen from the evidence of P.W.2, it is not in dispute that the petitioner sustained fracture shaft of femur right middle third and compound type two fracture of both bones of right leg middle third. It is forthcoming from the evidence that the petitioner was operated in the first instance on 01.12.1999 with degrade, on second occasion, i.e., on 11.01.2000, he underwent surgical intervention for insertion of intermedullary nail on the right femur, and, on third occasion on 18.01.2000, re-nailing was done on the right leg and he was discharged on 15.02.2000. The evidence of P.W.2-doctor, who asserted disability at 35%, shows that it takes two weeks' time to

unite and medicine 'Caflaxin' was not available in the Government General Hospital, Guntur, and the said medicine was purchased by the petitioner from outside the hospital. So, concerning the medical bills numbering 103 presented by the petitioner for a sum of Rs.51,119-25 ps, it is difficult to sort out which of them relate to purchase of medicine 'Caflaxin'. Therefore, keeping in view, the said medicine was purchased from outside by the petitioner, a sum of Rs.25,000/- is granted towards medical expenses. Keeping in view, the shortening of right leg by 1½ inch, which accounts for permanent disability at 35% spoken to by the doctor which is to be taken into consideration to determine compensation, though, not in terms of loss of earning capacity, still, keeping in view, he was an L.M.E. student and there are prospects of getting job and pursuing the job with efficiency, his income can be taken at Rs.2,000/- per month, which appears to be reasonable or the annual income at Rs.24,000/-. When 35% of disability is considered, by applying multiplier '18' as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v.**

**Delhi Transport Corporation and another**<sup>[1]</sup>, the loss of earnings on account of the partial permanent disability works out to Rs.1,51,200/-, i.e., Rs.24,000/- x 18 x 35%. This apart, a sum of Rs.25,000/- is granted towards pain and suffering, keeping in view, the petitioner had

undergone surgical interventions thrice. Towards extra nourishment, a sum of Rs.10,000/- is granted. Towards attendant charges, a sum of Rs.12,000/- is granted, keeping in view, he could not move freely requiring assistance for atleast six months. Besides the same, towards transport charges, a sum of Rs.5,000/- is granted.

12. Thus, the petitioner is entitled to a total sum of Rs.2,28,200/- (Rupees two lakh twenty eight thousand and two hundred) as against Rs.50,000/- granted by the Tribunal, towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount granted by the Tribunal, but on the enhanced amount, it is granted at 7.5% per annum from the date of petition till realization in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**<sup>[2]</sup>.

13. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand

closed.

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**A. SHANKAR NARAYANA, J**

7<sup>th</sup> January, 2016

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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2013 ACJ 1403