

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.2851 OF 2005

JUDGMENT:

The instant Civil Miscellaneous Appeal is preferred by the petitioner seeking enhancement of compensation on the ground that only an amount of Rs.25,000/- was granted as against Rs.3,00,000/- claimed under Section 166 and 140 of the Motor Vehicles Act, 1988 (for short 'the Act') and Rules 455 and 476 of the Andhra Pradesh Motor Vehicles Rules 1989, through the order and decree, dated 22-11-2004, in M.V.O.P. No.558 of 2000, by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Guntur (for short 'the Tribunal').

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.AEK-6165 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4(a) The facts, in brief, are that on 17.07.1995 at about

5.00 a.m., while the petitioner was driving the lorry bearing No.AEK-6165 from Calcutta to Bangalore with a load of gunny bags, it turned upside down near Tangi, Kurda District, Orissa State, since he lost control over it due to rash and negligent driving, resulting in severe injuries to him including crush injury to left elbow joint.

(b) According to the petitioner, the Station House Officer, Tangi Police Station registered a case in Crime No.109 of 1995.

(c) Claiming that he was earning Rs.2,500/- per month, he was treated in Government Hospital, Tangi, and after first-aid thereat, he was referred to Government Hospital, Bhubaneswar, where he took treatment for four (4) days as in-patient and from there he was shifted to Vijayawada, and admitted in the hospital of Dr. P.J. Brahmanandam, Vijayawada, where he took treatment as inpatient up to 12-09-1995 and a steel rod was inserted in his left hand and skin grafting was done, sought the aforesaid amount stating that he suffered impairment of 40-75% and since he was driver, he has become totally incapacitated to drive the lorry, and, therefore, sought to take the disability as 100%.

5. Respondent No.1, owner of the lorry involved in the accident, filed counter resisting the claim and sought to dismiss the claim petition.

6. Respondent No.2, insurer of the lorry, filed counter opposing the claim stating that it is a case of workmen and, therefore, provisions of the Act are not applicable and that the Tribunal has no jurisdiction to try the case and thus, sought to dismiss the claim petition.

7. During enquiry, the petitioner besides examining himself as PW.1, examined Dr. M. Rama Mohanarao as PW.2 and marked Exs.A-1 to A-6. On behalf of the respondents, no witnesses were examined, but a copy of the insurance policy along with terms and conditions of the lorry involved in the accident, was marked as Ex.B-1.

8. On issue No.1, the Tribunal recorded a finding stating that due to rash and negligent driving of the lorry driver, who is none other than the petitioner, the accident had occurred. On issue No.2, while discarding Ex.A-6 since there has been endorsement stating that the same cannot be used for Court purposes, taking description of injuries as mentioned in Ex.A-3, granted Rs.15,000/- towards injury, Rs.5,000/- towards medical expenses and treatment and Rs.5,000/- towards pain and suffering, and, thus, awarded a total sum of Rs.25,000/- with interest at

9% per annum.

9. Heard Sri A. Rajendra Babu, learned counsel for the petitioner (appellant), and Smt. A. Malathi, learned counsel for respondent No.2, insurer.

10. The instant appeal was dismissed for default against respondent No.1, owner of the lorry, by the order of this Court, dated 05.01.2012, but, the same is of no consequence in view of the fact that the respondent No.1 had already suffered decree before the Tribunal and also in view of the decision of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[1].

11. Perused the order and decree under challenge and the evidence let in by both sides.

12. The Tribunal was not right in excluding Ex.A-6. Therefore, taking percentage of the disability as shown in Ex.A-6 between 40 - 75%, but the minimum disability as 40%, taking the income of the petitioner as Rs.2,000/- per month or Rs.24,000/- per annum, and his age as '25' years, when multiplier '18' is applied as per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**^[2], the loss of future earning capacity works out to Rs.1,72,800/- (Rs.24,000/- x 18 x 40%) as the petitioner was a lorry driver and lost functioning of his left upper arm as the evidence of the

doctor (PW.2) would clearly show that he was suffering from 'ischemic contracture' rendering the upper forearm almost useless. Besides the same, the amounts granted by the Tribunal viz., Rs.5,000/- towards medical expenses and treatment and Rs.5,000/- towards pain and suffering are confirmed.

13. Thus, the petitioner is entitled to a total compensation of Rs.1,82,800/- (Rupees one lakh eighty two thousand and eight hundred only) as against Rs.25,000/- awarded by the Tribunal, and the same is accordingly granted, maintaining the rate of interest at 9% per annum on the amount of Rs.25,000/- granted by the Tribunal while reducing the same to 7.5% per annum on the enhanced compensation, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[3], from the date of petition till realisation.

14. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order by 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 21, 2016.

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[\[1\]](#) 2001 (1) ALT 495 (D.B.)
[\[2\]](#) (2009) 6 SCC 121
[\[3\]](#) 2013 ACJ 1403 = 2013(4) ALT 35