

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.122 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.55,250/- as compensation by the order dated 24.10.2009 in M.V.O.P. No.1043 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-X Additional District Judge (Fast Track Court), Narasaraopet (for short, 'the Tribunal') as against the claim of Rs.2,14,500/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the appellant-petitioner 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 the lorry bearing registration No.AP 07W 3767, 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 fact-situation occurring in the instant case is not in dispute including the manner in which the accident did take place. The nature of injuries sustained by the petitioner including partial permanent disability is also not in dispute by respondent No.2-

Insurance Company. But the dispute is with regard to the percentage of disability as well as the amounts incurred towards medical expenses and the other amounts granted towards various heads on the ground that the said amounts were very meager and would not satisfy the requirement of just and adequate compensation awarded by the Tribunal.

5. Heard Sri D. Krishna Murthy, learned counsel for the appellant-petitioner, and Smt. Pushpinder Kaur, learned Standing Counsel for respondent No.2-Insurance Company. Though, service was completed on respondent No.1, none appears for him.

6. The injuries sustained by the petitioner, as spoken to by P.W.2-medical officer and as could be gathered from Ex.A.3-wound certificate, would show that he sustained bony swelling with eruptions with abnormal mobility found on left thigh, comminuted fracture of left femur shaft and comminuted fracture of right tibia and even punctured wound over the outer aspect of left thigh at its lower third. P.W.2, who treated the petitioner in Teja Nursing Home, determined percentage of disability as 20%. The Tribunal did not agree with it and fixed it at 15% and taken the earnings at Rs.15,000/- per annum and applied multiplier '15' and thereby, arrived at Rs.33,750/- towards loss of future earning capacity. So far as other heads are concerned, a sum of Rs.3,000/- is granted towards pain and suffering and mental agony @ Rs.1,000/- per injury, Rs.2,000/-towards extra nourishment, Rs.15,000/- towards medical expenses basing on the

bills and vouchers, which constitutes doctors fee at Rs.9,000/-, costs of medicines at Rs.2,000/- and diagnostic tests and costs of implants at Rs.4,000/-, and Rs.1,500/- towards loss of earnings for a period of 15 days at Rs.100/- per day, making a total of Rs.55,250/- with interest at 7.5% per annum.

7. Learned counsel for the appellant-petitioner would submit that the Tribunal has not properly appreciated the evidence, more particularly, the evidence of P.W.2 and was wrong in reducing percentage of disability or 20% to 15%, even the earnings at Rs.15,000/- per annum which was notional income also on lower side, despite the Tribunal at one stage in paragraph No.19 of its order, observed that the earnings of the petitioner would be atleast Rs.100/- per day and granted Rs.1,500/- towards loss of earnings during hospitalization for a period of 15 days.

8. On the other hand, learned counsel for respondent No.2 would submit that the compensation granted by the Tribunal is just and adequate and, thus, supports the order and decree passed by the Tribunal.

9. Perused the order and the evidence on record. Ex.A.3-wound certificate was issued by the Government Hospital. P.W.2's evidence would show that the petitioner sustained 20% disability, but the disability is not elaborated to substantiate on what basis he arrived at 20%. However, since the Tribunal has taken the disability at 15%,

the same is maintained. So far as the income is concerned, the Tribunal has taken notional income at Rs.15,000/-, but in paragraph No.19 of its order, it has observed that the earnings of the injured would be at Rs.100/- per day and thereby, awarded Rs.1,500/-, as mentioned in the above, during the hospitalization period for 15 days. The petitioner was working as a Mason. Treating his daily earnings at Rs.100/-, as discussed by the Tribunal in paragraph No.19 of its order, the annual income is arrived at Rs.36,000/-. In that view of the matter, the amount of Rs.33,750/- granted by the Tribunal towards disability at 15% has to be doubled and, thus, the petitioner becomes entitled to Rs.67,500/-. The amount of Rs.3,000/- granted by the Tribunal towards pain and suffering is enhanced to Rs.15,000/- and the amount of Rs.2,000/- granted by the Tribunal towards extra nourishment is enhanced to Rs.5,000/-. The amount of Rs.26,875/- spent by the petitioner is granted as against Rs.15,000/- granted by the Tribunal. The temporary loss of earnings granted by the Tribunal at Rs.1,500/- for 15 days is enhanced to Rs.6,000/- keeping in view that atleast for two months, the petitioner would not have been able to pursue his activities. This apart, the petitioner would have required an attendant to assist him for a period of two months, and, therefore, a sum of Rs.3,000/- is granted @ Rs.1,500/- per month towards attendant charges.

10. Thus, the petitioner is entitled to a total sum of Rs.1,23,375/- (Rupees one lakh twenty three thousand three hundred

and seventy five) as against Rs.55,250/- 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 7.5% per annum and the same is maintained on the enhanced amount also in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

11. 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.

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

A. SHANKAR NARAYANA, J

8th November, 2016

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¹ 2013 ACJ 1403