

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.2446 of 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.94,650/- as compensation for the injuries sustained by the appellant in a road accident, by the order dated 02.01.2007, in M.V.O.P.No.1984 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Warangal (for short, the Tribunal'), as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), 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, who are the owner and insurer of the auto bearing registration No. AP 36 U 8451, respectively, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The fact-situation occurring in the instant case is that the petitioner sustained injuries to his left thigh bone, left knee, left shoulder and skull etc. in a road accident occurred on 20.07.2004 and he was treated as inpatient in M.G.Hospital and also as outpatient in Sri Ganesh Orthopedic Hospital, Hanamkonda. He took bed rest for six months on the advise of Doctors and spent Rs.60,000/- towards medical expenses and extra-nourishment and on the ground that he was earning Rs.8,000/- per month and

sustained partial and permanent disability, he claimed compensation of Rs.2,00,000/-.

5. Before the Tribunal, the 1st respondent remained *ex parte*. The 2nd respondent opposed the claim by raising various pleas and also claiming that the amount sought for by the petitioner was exorbitant and, therefore, sought to dismiss the claim petition.

6. Basing on the said pleadings, the Tribunal has framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining Sri Khaja Chotemiya, who is the pillion rider, as P.W.2 and two of the Doctors as P.Ws. 3 and 4 and marked Exs.A.1 to A.14 to substantiate their claim. On behalf of the 2nd respondent-insurance company, no witnesses were examined, but copy of the insurance policy was marked as Ex.B.1.

7. The Tribunal recorded a finding in favour of the petitioner on issue No.1 basing on the evidence. On issue No.2, the Tribunal, having appreciated the evidence of both the medical officers, the documents relating to the treatment the petitioner has undergone, and the amount he has spent towards medical expenses, felt that a sum of Rs.12,000/- towards loss of temporary earnings, Rs.23,650/- towards medical expenses and extra-nourishment, Rs.1,000/- towards transportation charges, Rs.8,000/- towards pain and suffering and Rs.50,000/- towards permanent disability would be reasonable and adequate and, accordingly, granted the same with interest at the rate of 7.5% per annum thereon.

8. On the ground that the compensation granted by the Tribunal was very meager, the present appeal has been preferred

mainly contending that the Tribunal has not properly appreciated the evidence on record and treated the petitioner as 65 years old, without any specific reasons being assigned, despite the fact that he was 55 years old and was earning average income of Rs.8,000/- per month, and therefore sought to grant the balance amount.

9. Heard Sri A.Prabhakar Rao, learned counsel for the appellant/petitioner. No representation on behalf of the 2nd respondent-insurance company. Perused the order and perused the record.

10. The Tribunal, no doubt, granted Rs.50,000/-, as claimed by the appellant, towards permanent disability to the extent of 30% but the same appears to be reasonable. With regard to age of the petitioner, though he claimed that he was 55 years old on the date of accident, he has not placed any material before the Tribunal nor the learned counsel for the petitioner would point out any material favouring the petitioner to show that he was 55 years old on the date of accident. Therefore, when the age of the petitioner is taken as 65 years, the multiplying factor would be '5', as provided in the Table formulated by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**¹, and the Tribunal has rightly applied the same.

11. The Tribunal granted Rs.23,650/- towards medical expenses and extra-nourishment. However, the same is maintained only towards medical expenses and a sum of Rs.5,000/- is granted towards extra nourishment exclusively. The amount of Rs.8,000/- granted by the Tribunal towards pain and suffering is on lower side,

¹ (2009) 6 Supreme Court Cases 121

when kept in view the sufferance the petitioner has undergone during the treatment period. Therefore, the said sum is enhanced to Rs.15,000/-.

12. The Tribunal appears to have not granted any amount towards attendant charges. Since the petitioner sustained injuries to one of his lower limbs, certainly, without the assistance, he would not have pursued his activities for atleast two months. Therefore, a sum of Rs.3,000/-, at the rate of Rs.1500/- per month for two months, is granted. Thus, the petitioner is entitled for an amount of Rs.1,09,650/- towards compensation and accordingly awarded as against the compensation of Rs.94,650/- awarded by the Tribunal.

13. Since the rate of interest awarded by the Tribunal at 7.5% per annum is in accordance with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**², the same rate of interest is maintained on the entire amount awarded from the date of petition till realization.

14. 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.

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

(A.SHANKAR NARAYANA, J)

30th December, 2016
JSU

² 2013 ACJ 1403