

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1822 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.54,000/- as compensation by the order dated 26.11.2008 in M.V.O.P. No.1342 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IX Additional District Judge (Fast Track Court), Guntur (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Sections 140, 141 and 163-A 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 29T 7119, 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. Heard Sri N.Subba Rao, learned counsel for the appellant-petitioner. Respondent Nos.1 and 2, though, served with notices, none appears for them. The only defence offered by respondent No.2 in the original petition requires consideration.

5. Since already respondent Nos.1 and 2 suffered the decree, the fact-situation needs no reference.

6. Amongst the witnesses examined by the petitioner, P.W.2 is Dr. M. Rama Mohana Rao, Professor of Orthopaedic in NRI General Hospital, Chinakakani. His evidence shows that the petitioner was admitted in the hospital on 18.06.2006 and discharged on 31.07.2006, as the petitioner sustained head injury and infected right foot and left thigh with sepsis, which injuries he sustained in a road accident, and he was treated for antibiotic and debridement and K-wire fixation was done to all five toes of right foot, later he underwent skin grafting, though, the fractures were healed, there was a deformity of right foot and there was restriction in movements of the foot and the loss of physical function was about 15% and feels difficulty to walk long distance and stand for long time and difficulty in applying brakes of a vehicle as well as accelerators, since he was a driver by profession. No doubt, P.W.2 was cross-examined, but nothing is brought out to discard his evidence.

7. Turning to the amounts awarded by the Tribunal, on the ground that the disability certificate was issued by P.W.2 but not by any Medical Board, the Tribunal considered the disability as 10% instead of 15% and granted Rs.25,000/- towards grievous injuries and pain and suffering, Rs.3,000/- for simple injuries and pain and suffering, Rs.16,000/- towards medical expenses, extra nourishment and other incidental charges and Rs.10,000/- towards disability of

10%, making a total amount of Rs.54,000/- and granted the same with interest at 8% per annum from the date of petition till the date of award and at 6% from the date of award till payment.

8. The Tribunal was not right in recording the finding that since the Medical Board did not issue disability certificate and it was issued by P.W.2, who had spoken about the disability assessing it at 15%, the disability was reduced to 10%. Therefore, the disability is treated as 15%. The Tribunal has granted Rs.10,000/- towards permanent disability without applying any structural formula. Even treating that the petitioner was earning Rs.2,000/- per month or Rs.24,000/- per annum and taking multiplier factor '18' since the petitioner was aged 25 years at the time of accident, the disability at 15% would work out to Rs.64,800/- ($\text{Rs.24,000/-} \times 15\% \times 18$) and the same is granted towards disability including grievous injuries and pain and suffering, as against the amounts granted by the Tribunal at Rs.25,000/- towards grievous injuries and pain and suffering and Rs.10,000/- towards disability. The amount of Rs.3,000/- granted by the Tribunal towards simple injuries and pain and suffering is maintained. The amount of Rs.16,000/- granted by the Tribunal towards medical expenses is enhanced to Rs.30,000/-. Besides the same, the petitioner is entitled to Rs.12,000/- towards loss of earnings for six months.

9. Thus, the petitioner is entitled to a total sum of Rs.1,09,800/- (Rupees one lakh nine thousand and eight hundred) as

against Rs.54,000/- (Rupees fifty four thousand) 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 8% per annum from the date of petition till the date of award and at 6% per annum from the date of award till payment. But the petitioners are entitled to interest at 7.5% per annum on the entire amount of compensation from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

10. 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.

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

A. SHANKAR NARAYANA, J

12th September, 2016

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¹ 2013 ACJ 1403