

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1922 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.45,500/- as compensation by the order dated 03.11.2008 in M.V.O.P. No.539 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-X Additional District Judge (Fast Track Court), Guntur at Narasaraopet (for short, 'the Tribunal') as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') read with the Rules framed thereunder, 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 jeep bearing registration No.AP 11W 5727, 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 would show that on 26.03.2007 at about 8-30 p.m., while the petitioner was proceeding in an auto-rickshaw bearing registration No.AP 7W 9794 from Dacheipalli side towards

Miriyalaguda side on Dachepalli-Miriyalaguda road and reached near warehousing godown at Gamalapadu village, a jeep bearing registration No.AP 11W 5727 driven by its driver in a rash and negligent manner at high speed coming in opposite direction, that too on wrong side, dashed the auto-rickshaw, due to which, the petitioner sustained fracture to her right hand and she was taken to Government Hospital, Gurajala and from there she was shifted to Government General Hospital, Guntur, where she was treated as an inpatient and she had undergone surgical intervention to her right hand, steel rod was inserted and she suffered deformity of her right hand with restriction movements to her right elbow joint and her right hand became wreck. The petitioner claiming that she was earning Rs.80/- per day as a coolie, sought a sum of Rs.1,00,000/- from respondent Nos.1 and 2.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*.

6. Respondent No.2 opposed the claim by filing a detailed counter.

7. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined herself as P.W.1 besides examining the doctor as P.W.2 and marked Exs.A.1 to A.6; whereas on behalf of respondent No.2, no witnesses were examined and no documents were filed.

8. The Tribunal on appraisal of evidence on record, held issue No.1 in favour of the petitioner.

9. The Tribunal on issue No.2, basing on the evidence of P.W.2, who has spoken about 25% partial permanent disability, taken 15% disability and fixing the annual income at Rs.15,000/- and applying multiplier '18', assessed the amount of compensation towards 15% partial permanent disability at Rs.40,500/-. Besides the same, the Tribunal also granted Rs.2,000/- towards pain and suffering and @ Rs.1,000/- each under the heads attendant charges, conveyance and extra nourishment. Thus, in all, the Tribunal granted a sum of Rs.45,500/- with interest at 7.5% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal ought to have taken 25% disability but not 15%, despite the evidence of medical officer, examined as P.W.2 and ought to have granted amount claimed under the head 'pain and suffering' and the interest at 12% as against 7.5% and, hence, sought to grant the balance amount.

11. Heard Sri N.Subba Rao, learned counsel for the appellant-petitioner. Though, service was completed on respondent Nos.1 and 2, none appears for them.

12. Though, it is submitted by the learned counsel for the appellant-petitioner that 25% disability ought to have taken towards partial permanent disability, but so far as the disability of 25% spoken

to by P.W.2, it relates to an organ disability. Therefore, the disability taken by the Tribunal at 15% cannot be faulted with.

13. However, the amount awarded under the other heads is on lower side. When there is deformity of the wrist, the amount of Rs.2,000/- granted by the Tribunal towards pain and suffering is on lower side and hence, enhanced to Rs.10,000/- and Rs.3,000/- granted by the Tribunal towards attendant charges, conveyance and extra nourishment is enhanced to Rs.10,000/-.

14. Thus, the petitioner is entitled to a total sum of Rs.60,500/- (Rupees sixty thousand and five hundred) as against Rs.45,500/- 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 entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

15. 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.

¹ 2013 ACJ 1403

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

22nd August, 2016
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A. SHANKAR NARAYANA, J

