

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.3365 OF 2005

JUDGMENT:

The instant appeal is preferred by the petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by dissatisfying with the award of Rs.67,000/- as compensation for the injuries sustained by him as against the claim of Rs.1,50,000/- laid under Section 166 of the Act, by order and decree, dated 19-01-2005, in O.P. No.268 of 2001, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District Judge (Fast Track Court), Mahabubnagar (for short 'the Tribunal'), seeking enhancement.

2. The appellant herein is the petitioner in O.P. before the Tribunal and respondent - Andhra Pradesh State Road Transport Corporation is also arrayed as Respondent.

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

4. The facts, in brief, are that on 18-01-2001 at about

10.00 a.m., while the petitioner was discharging his duties along with one P. Chandra Shekar at Bijnapally road in Vattem village near Prashanthi Nilayam, an RTC bus bearing registration

No.AP 10Z 8269 driven by its driver at high speed in a rash and negligent manner hit the petitioner, due to which, he sustained fracture injury to his right thigh. The Station House Officer, Bijnapally Police Station also registered a case in Crime No.6 of 2001 under Section 337 IPC. The petitioner claiming that he was 35 years old; earning Rs.3,633/- per month as Gang man in R & B Department; and that immediately after the accident he was shifted to Government Head quarter's Hospital, Mahabubnagar and then again shifted to K.M.T. Hospital, Vijayanagar Colony, Hyderabad, where he has undergone surgical intervention and fixation of steel rod in his right leg was done and that he incurred Rs.80,000/- towards medicines and he became permanently disabled, sought to grant Rs.1,50,000/- as compensation against the respondent.

5. Respondent - Corporation filed counter opposing the claim.

6. On the basis of pleadings, the Tribunal has framed three issues about the responsibility for the accident.

7. During inquiry, in order to determine the liability and the compensation, the petitioner examined himself as PW.1 and also examined Dr. M. Vijayakanth as PW.2 by taking out a commission and marked Exs.A-1 to A-15. On behalf of respondent, no witnesses were examined and no documents were filed.

8. On issue No.1, the Tribunal, on appraisal of evidence on record, recorded the finding in favour of the petitioner and against the respondent. On issue No.2, based on the evidence of PW.2 and the medical record, agreeing with the evidence of PW.2 that the petitioner was suffering from mal-united fracture of right femur with shortening of right lower limb of about 2½” with fixed flexion deformity of right knee with restricted movements of hip and knee right side accounting for 25% disability, granted Rs.20,000/- towards medical expenditure, Rs.5,000/- towards extra nourishment, Rs.2,000/- towards transportation, Rs.10,000/- towards pain and suffering, and Rs.15,000/- towards loss of temporary earnings. The Tribunal though arrived at Rs.52,800/- towards loss of earning capacity applying relevant multiplier ‘12’, the annual income at Rs.4,400/-, but observing that there is no loss of earnings on account of his disability as he was still doing the duty but with discomfort while walking, squatting on account of shortening of right leg by 2½’,

awarded Rs.15,000/- towards deformity and discomfort and, thus, granted a total sum of Rs.67,000/- under all heads as compensation with interest at 9% per annum thereon.

9. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement of compensation contending in the grounds that the Tribunal ought to have taken 100% discomfort in his work performance as he is a gang man in R & B Department involving physical ability which is considerably lost, which the Tribunal totally ignored. It is also stated that the Tribunal granted very meager compensation despite petitioner is entitled to higher compensation and, therefore, sought to grant balance amount.

10. Heard Sri V. Hanumanth Rao, learned counsel for the appellant - petitioner. Despite service of notice on respondent - Corporation, none appears.

11. Perused the order and the evidence on record, more particularly, evidence of PW.2 and the medical evidence through Ex.A-4, discharge summary of Dr.K.M.T. Specialty Clinic, Ex.A-5, case record of District Hospital, Mahabubnagar, Exs.A-6 to A-14, which are medical records and Ex.A-15, salary certificate.

12. As seen from the record, petitioner sustaining

2½” shortening of his right leg is not in dispute and, in fact, the same is proved through the evidence of PW.2 and a definite finding was recorded by the Tribunal therefor and, even granting Rs.15,000/- towards compensation as the petitioner would be suffering discomfort while walking and squatting on account of the deformity. The amounts granted by the Tribunal under each head were already narrated in the above.

13. The Tribunal, somehow, went wrong in observing that the structured formula in Schedule-II appended to Section 163-A of the Act prescribes only Rs.15,000/- as onetime payment, and thereby granted Rs.20,000/- towards medical treatment though, medical bills would show the expenditure at Rs.34,542/-. As the petitioner was treated in three spells and evidence of PW.2 would also prove the same, the amount of Rs.34,542/- is granted as against the amount of Rs.20,000/- granted by the Tribunal.

14. The award of Rs.5,000/- granted by the Tribunal towards extra nourishment is enhanced to Rs.10,000/- keeping in view, the nature of injuries sustained by the petitioner and the sufferance he has undergone. Towards transport charges, the amount of Rs.2,000/- granted by the Tribunal is maintained. The amount of Rs.10,000/- granted by the Tribunal towards pain and suffering is

enhanced to Rs.15,000/- as there has been shortening of right leg by 2½". The Tribunal has granted Rs.15,000/- towards temporary loss of earnings taking into consideration the petitioner would not have attended to his job for four months based on salary certificate - Ex.A-15 which shows Rs.3,753/- as the monthly gross salary, arrived at Rs.15,012/- rounding it off to Rs.15,000/-, the same is maintained.

15. Towards discomfort and deformity sustained by the petitioner, the Tribunal on the premise that there was no loss of earnings sustained by the petitioner on account of his disability, refused to grant reasonable amount, but, however, granted Rs.15,000/- as there would be discomfort while walking and squatting, which request is being reviewed. In fact, the Tribunal has taken the disability into consideration and even worked out the annual income at Rs.52,800/-, but did not apply multiplier. Be that as it may, the very shortening of right leg by 2½", when kept in view, the nature of duties to be performed by the petitioner as a gang man in R & B Department, which relates to physical ability and the impact on longevity of his life also when kept in view, the petitioner is entitled to Rs.1,50,000/- as claimed. Therefore, the balance amount of Rs.73,458/- (Rs.1,50,000 – Rs.76,542) is granted. Thus, the discomfort and deformity is enhanced to

Rs.73,458/- from Rs.15,000/- granted by the Tribunal. Thus, in all, the petitioner is entitled to Rs.1,50,000/- [Rs.34,542/-+ Rs.10,000/- + Rs.2,000/- + Rs.15,000/-+ Rs.15,000/- + Rs.73,458/-] as compensation as against Rs.67,000/- granted by the Tribunal.

16. Concerning rate of interest, the Tribunal has granted the same at 9% per annum and the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.83,000/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

17. In the result, the appeal is allowed, and the order and decree, dated 19-01-2005, in O.P. No.268 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.1,50,000/- (Rupees one lakh and fifty thousand) from Rs.67,000/- with interest at the rate of 9% per annum on the amount of Rs.67,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.83,000/-(Rupees eighty three thousand) from the date of petition till realization. There shall be no order as to costs.

18. As a sequel thereto, miscellaneous

applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

February 03, 2016.
Mgr

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