

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.2349 of 2005

JUDGMENT:

The present appeal is preferred by the petitioner-claimant seeking enhancement under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), on the ground that the amount of Rs.27,500/- awarded as compensation, by the order dated 07.12.2004 in M.V.O.P.No.228 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Kakinada (for short, 'the Tribunal'), as against the claim of Rs.1,50,000/- laid under Section 166 of the Act, is very meagre compared to the suffering he had undergone due to the accident.

2. The appellant herein is the petitioner-claimant, while respondent Nos.1 and 2, who are the driver of the RTC bus bearing No. AP 9 Z 7026 and the employer of respondent No.1, respectively, were 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 on 29.03.2001, while the petitioner was taking his lorry towards Kamalapuram and reached Indrapalem 'Z' bridge, respondent No.1, who was the driver of an RTC bus bearing

No. AP 9Z 7026, driven it in a rash and negligent manner and dashed the lorry, due to which, the petitioner sustained multiple injuries including a grievous injury. He was immediately shifted to Government General Hospital, Kakinada, and underwent treatment.

5. The Station House Officer, II Town Police Station registered a case against respondent No.1 under Section 338 IPC. The petitioner, claiming that he was working as a lorry driver earning Rs.5,000/- per month and that, due to the accident, he sustained fracture and spent an amount of Rs.25,000/- towards medical expenses, and thereby sought a sum of Rs.1,50,000/- as compensation against respondent Nos.1 and 2.

6. Respondent No.1, the driver of the RTC bus, remained *ex parte* before the Tribunal. Respondent No.2- employer of respondent No.1 opposed the claim by filing a counter ultimately contending that the claim was highly excessive and, thereby, sought to dismiss the claim petition.

7. Basing on the said pleadings, the Tribunal framed three issues. During enquiry, the petitioner examined himself as P.W.1, besides examining Dr. Y.Venkateswara Rao as P.W.2, and marked Exs.A1 to A5, besides getting marked Ex.X1-case sheet through P.W.2. On behalf of the respondents, respondent No.1 stepped into the box and examined himself as R.W.1, but no documents were filed.

8. The Tribunal, on appreciation of evidence on record, held issue No.1 in favour of the petitioner holding that due to rash and negligent driving of respondent No.1, the accident had occurred.

9. On issue No.2, the Tribunal, basing on the evidence of P.W.2, the Medical Officer, agreed with the 5th injury, which is described as swelling deformity of right leg with fracture of right tibia and fibula, and the medical procedures undergone by the petitioner and felt reasonable to grant Rs.4,000/- towards loss of temporary earnings for two months @ Rs.2,000/- per month, Rs.5,00/- towards transport charges, Rs.5,000/- towards pain and suffering and mental agony, Rs.18,000/- towards 5% disability by applying the structured formula taking multiplier "12" fixing the age of the petitioner as 45 years and, thus, arrived at a total compensation of Rs.27,500/- with interest at 9% per annum.

10. The said order is under challenge on the ground that the amount granted by the Tribunal is very meager, contending in the grounds that the Tribunal has not properly appreciated the evidence of P.W.2, the Medical Officer, and the suffering the petitioner had undergone till he obtained normalcy and, therefore, sought to grant the balance amount.

11. Heard Sri A.K.Kishore Reddy, learned counsel

for the appellant. Despite service of notice on respondent Nos.1 and 2, none appears for them. Perused the order and evidence, both, oral and documentary, let in by the parties.

12. The evidence of P.W.2 as well as the case sheet marked as Ex.X1 would reveal that the petitioner sustained five injuries altogether, which were detailed in paragraph 14 of the order of the Tribunal. The petitioner had undergone treatment from 29.03.2001 to 24.04.2001 for the fracture of tibia and underwent surgical intervention with fixation of plates and screws and he was discharged on 24.04.2001. The doctor certified 5% disability, which the Tribunal has accepted. Therefore, the said finding cannot be disturbed.

13. So far as income of the petitioner is concerned, it was treated as Rs.2,000/- per month. There is no evidence to substantiate that the petitioner was earning Rs.5,000/- per month, except his statement as a witness. However, so far as the multiplier is concerned, it should have been "14" in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1]. Therefore, when multiplier "14" is applied, the compensation towards 5% disability works out to Rs.16,800/- (Rs.2,000 x 12 x 5/100 x 14).

14. So far as the amounts granted by the Tribunal

under other heads is concerned, certainly, they appear to be on lower side. The amount of Rs.4,000/- granted towards loss of temporary earnings for a period of two months is enhanced to Rs.12,000/- as the petitioner would not have gained normalcy at least for a period of six months from the date of the accident at the same rate of his monthly earnings. The amount of Rs.500/- granted towards transport charges is maintained. The amount of Rs.5,000/- granted towards pain and suffering and mental agony is enhanced to Rs.10,000/- keeping in view, the nature of injuries sustained and the surgical intervention he had undergone. Towards extra-nourishment, no amount is awarded. A sum of Rs.5,000/- is awarded towards extra nourishment. Thus, the compensation of Rs.27,500/- granted by the Tribunal is enhanced to Rs.44,300/- (Rupees forty four thousand three hundred only).

15. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the compensation of Rs.27,500/- granted by the Tribunal. However, on the enhanced amount, interest at 7.5% per annum is granted 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**^[2].

16. Accordingly, the instant appeal is allowed in part

modifying the order passed by the Tribunal, by enhancing the compensation with interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

**JUSTICE A.SHANKAR
NARAYANA**

15.07.2016
v v

[\[1\]](#) (2009) 6 SCC 121
[\[2\]](#) 2013 ACJ 1403