HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1679 OF 2005

JUDGMENT:

The United India Insurance Company Limited, represented by its Branch Manager, Hyderabad, which is respondent No.2 in O.P. No.1123 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District (for short, 'the Tribunal'), aggrieved by the order dated 03.01.2005, whereby and whereunder, the Tribunal awarded a sum of Rs.4,30,000/- with interest at 9% per annum as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by respondent No.1 herein in a road accident, preferred the instant appeal under Section 173 of the Act on the main ground that the compensation awarded is highly excessive.

2. Appellant-insurer of the accident vehicle is respondent No.2, while respondent No.1 herein-claimant is the petitioner and respondent No.2-owner of the accident vehicle is respondent No.1 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 23.03.2000 at about 11-00 hours, while the petitioner was walking by the side of the road to go to the fields of one Panduranga Reddy along with others and reached Nagarguda village culvert, a lorry bearing registration No.AP 7V 3749 proceeding towards Chevella, driven in a rash and negligent manner at high speed, dashed against her, due to which, she fell down and sustained fracture to her right leg and multiple injuries all over her person and she was immediately shifted to Osmania General Hospital for treatment. According to her, she spent huge amount towards medical expenses and, thus, she laid a claim initially for Rs.1,50,000/- together with interest and thereafter, by making amendment, the claim was enhanced to Rs.5,00,000/-.

5. Respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim taking one of the grounds as the claim itself is highly excessive.

6. Basing on the said pleadings, the Tribunal framed four 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.8; whereas, on behalf of respondent No.2, its official by name G.Rajeshwar Rao was examined as R.W.1 and Exs.B.1 to B.4 were marked.

7. The Tribunal, while recording finding in favour

of the petitioner on issue No.1, on issue No.2, mainly basing on the evidence of P.W.2, taken the loss of earning capacity at 100%, though, P.W.2 assessed physical disability to a tune of 50%, fixed annual income at Rs.18,000/-, applied multiplier '16' and arrived at Rs.2,88,000/- towards permanent disability, Rs.61,000/- towards medical reimbursement and Rs.50,000/- towards marriage prospects of the petitioner, which was affected, besides granting Rs.30,000/- for the injury sustained by the petitioner, making a total of Rs.4,29,000/- rounding it off to Rs.4,30,000/- and granted the same with interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal ought to have taken annual income at Rs.15,000/- instead of Rs.18,000/- and the Tribunal went wrong in assessing the functional disability at 100% when P.W.2 estimated the disability at 50% and the Tribunal erroneously awarded Rs.50,000/- towards medical treatment, though, there was no tangible evidence and, therefore, sought to set aside the award.

9. Heard Sri A.V.K.S.Prasad, learned Standing Counsel for the appellant-insurer, and Sri T.Viswarupachary, learned counsel for respondent No.1 herein-petitioner. The instant appeal against respondent No.2 herein-owner was dismissed for default on

05.01.2012. The same would not make any difference in deciding the controversy herein.

10. Perused the order and the evidence on record. P.W.2's evidence is material to arrive at what would be the just and reasonable compensation. His evidence shows that initially, he has examined the petitioner on 11.05.2000. Thereafter, basing on the contents of Exs.A.4 and A.5, which are discharge summaries of Osmania General Hospital, Hyderabad, showing that the petitioner was thrice admitted and discharged for different spells for surgical interventions, he opined that she sustained 50% disability and she cannot walk without walker and with walker also, it would be difficult to walk and the petitioner cannot sit and stand and she cannot work as a labourer. However, he opines that if further treatment is provided, disability would be reduced, but it would be very expensive. He also states that to purchase appliances, its value would be Rs.50,000/- to Rs.60,000/-. When the learned Standing Counsel for the Insurance Company cross-examined this witness, no searching cross-examination was done. Thus, what all spoken to by the doctor as P.W.2 cannot be excluded from the record. However, when kept in view, the way in which they approached the Tribunal, certainly, it appears without there being proper proof, the Tribunal fixed the income at Rs.18,000/- per annum. In fact, for non-earning

member, the annual income can be taken as Rs.15,000/- and the disability at 100% and when multiplier ‘18’ is applied, compensation towards permanent disability works out to Rs.2,70,000/-. The amount of Rs.30,000/- granted by the Tribunal towards injury cannot be maintained. But however, towards pain and suffering, a sum of Rs.10,000/- can be added. The amount of Rs.50,000/- granted by the Tribunal towards marriage prospects of the petitioner has to be maintained. The Tribunal also granted Rs.61,000/- towards medical reimbursement, which the Tribunal has not properly explained as to whether it was the amount actually incurred by the petitioner or otherwise. So, the same cannot be maintained.

11. Thus, the petitioner is entitled to a total sum of Rs.3,30,000/- (Rupees four lakh) instead of Rs.4,30,000/- 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 9% per annum and the same is reduced to 7.5% per annum on the entire amount in view of the decision of the Hon’ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[1].

12. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by reducing the compensation as well as the interest, as

indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

29th June, 2016

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[1] 2013 ACJ 1403