

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1581 OF 2009

JUDGMENT:

On the ground that the amount of Rs.60,000/- awarded as against the claim of Rs.4,00,000/- laid under Section 166 (1) (a) of the Motor Vehicles Act, 1988 (for short 'the Act'), by the order and decree, dated 26-07-2006, in M.V.O.P. No.253 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal - cum - V Additional District Judge, Chittoor at Tirupati (for short 'the Tribunal'), the petitioner preferred the instant appeal under Section 173 of the Act, requesting to enhance the compensation for the injuries she sustained in a road accident that took place on 14-11-2002 at about 7.00 a.m., when a tractor and trailer bearing registration Nos.AP 04 T 3844 and 3845, respectively, hit her while she was going on foot near S.P. Mahila University Main Road, Tirupati.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer of the said tractor and trailer, respectively, are respondents as such in the MVOP before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the MVOP

before the Tribunal.

4. Before the Tribunal respondent No.1, owner of the tractor and trailer, remained *ex parte*.

5. Respondent No.2, insurer, opposed the claim by filing a counter.

6. The Tribunal having framed three issues basing on the pleadings, examined the petitioner as PW.1, M. Kanakadurga as PW.2 and Dr. K. Chandrasekhar, as PW.3, the doctor, who issued disability certificate and who has spoken to about disability and marked Exs.

A-1 to A-5. Whereas, no witnesses were examined, but Ex.B-1, copy of insurance policy was marked as Ex.B-1 on behalf of the 2nd respondent; held issue No.1 in favour of the petitioner. On issue No.1, basing on the entries in Schedule-II to Section 163-A of the Act, granted Rs.5,000/- per grievous injury making a total sum of Rs.10,000/- for two grievous injuries; Rs.1000/- each towards simple injury and for eight (08) simple injuries, granted Rs.8,000/-, besides granting Rs.30,692/- towards medical expenses; Rs.10,727/- towards loss of income and Rs.581/- towards extra nutrition, thus, a total sum of Rs.60,000/- was granted as compensation with interest at 7.5% per annum thereon.

7. The aforesaid order is under challenge in the

instant appeal. In the grounds, the appellant would state that though, she sustained injuries to her scalp, back bone, neck bone, right ear, right eye-brow and both hands, the Tribunal has not properly appreciated the evidence and awarded a meager sum and, therefore, sought to enhance the compensation.

8. Heard Sri S.V. Muni Reddy, learned counsel for the appellant - petitioner, and Sri Kota Subba Rao, learned Standing Counsel for respondent No.2 - M/s. Oriental Insurance Company Limited. Despite service of notice on respondent No.1, owner of the vehicle, none appears for him.

9. Perused the order and the material on record, both, oral and documentary.

10. Admittedly, the doctor, who treated the petitioner, was not examined, but the doctor, who just examined to assess the disability of 10%, was examined as PW.3, but he has not issued any medical certificate. A perusal of his evidence would show that he admits in cross-examination that when PW.1 approached him, the wounds were already healed. In the presence of the said answer, certainly, disability of 10% assessed by him cannot be accepted and rightly the Tribunal did so.

11. Turning to the amounts granted towards injuries

as well as pain and suffering, the Tribunal granted Rs.5,000/- towards each grievous injury. From a perusal of description of injuries shown in Ex.A-2 and the evidence of PW.3, the doctor, it is clear that the injuries sustained by the petitioner were fracture of C-2, C3 vertebrae, fracture of 3rd and 4th ribs on right side and 5th rib on left side and there was also consolidation of right lung wedge compression at D5, besides the injuries to be treated with SAH and she was advised bed rest for four weeks when she was discharged on 06-12-2002 having been admitted on 14-11-2002. When kept in view, the grievous injuries, which are fractures of two vertebrae and three ribs, finding place in Ex.A-2 and spoken to by PW.3, a sum of Rs.25,000/- per grievous injury can be awarded including pain and suffering. Thus, the amount of Rs.10,000/- granted by the Tribunal is enhanced to Rs.50,000/-. The Tribunal has granted Rs.1,000/- per injury so far as eight (08) simple injuries are concerned, the same is enhanced to Rs.3,000/- per injury, making a total of Rs.24,000/-. The amount of Rs.30,692/- granted by the Tribunal towards medical expenses is maintained, though, in the grounds the appellant sought Rs.1,00,000/- stating that she has incurred that much amount for want of proof. However, the amount of Rs.581/- granted towards extra nutrition requires enhancement and accordingly is enhanced to Rs.5,000/-, keeping in view the nature of

injuries she sustained. Towards transport and attendant charges, a further sum of Rs.5,000/- is granted. Towards loss of temporary earnings, the amount of Rs.10,727/- granted by the Tribunal is maintained. Thus, in all, the petitioner is entitled to Rs.1,25,419/- rounding it off to Rs.1,25,500/- as compensation as against the amount of Rs.60,000/- granted by the Tribunal.

12. The interest granted by the Tribunal at 7.5% per annum is maintained and even on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

13. In the result, the appeal is allowed in part, and the order and decree, dated 26-07-2006, in M.V.O.P. No.253 of 2003, passed by the Tribunal are modified enhancing the compensation to Rs.1,25,500/- (Rupees one lakh twenty five thousand and five hundred) from Rs.60,000/- with interest at the rate of 7.5% per annum from the date of petition till realization. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 05, 2016.

Mgr

[\[1\]](#). 2013 ACJ 1403