

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3305 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.56,500/- as compensation by the order dated 07.06.2005 in O.P. No.1127 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Nalgonda (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and Rule 455 of 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 owner and insurer of the auto rickshaw bearing registration No.AP 24U 4566, 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 in brief are that on 08.07.2002 at about 6-30 p.m., while the petitioner along with some other passengers was travelling in an auto bearing registration

No.AP 24U 4566 from Kalwakuntla village to Angadipeta and when they reached outskirts of Pullempla village, since the driver drove it in a rash and negligent manner at high speed, lost control over it and it turned upside down, due to which, he sustained serious injuries and he was immediately shifted to Government Hospital, Nalgonda. The petitioner, stating that he was getting Rs.6,000/- per month by working as a Mason and was bedridden and permanently disabled due to fractures, sought a sum of Rs.2,00,000/- from respondent Nos.1 and 2, who are owner and insurer of the accident vehicle.

5. Respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining co-passenger as P.W.2 and the doctor as P.W.3 and marked Exs.A.1 to A.10; whereas, on behalf of respondent No.2-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

7. On appraisal of evidence on record, the Tribunal discussed all the issues together and recorded a finding that due to rash and negligent driving of the driver

of auto rickshaw, the accident had occurred. So far as the compensation is concerned, the Tribunal having analyzed the evidence of medical officer examined as P.W.3 and the disability certificate-Ex.A.8, granted a sum of Rs.56,500/- with interest at 8% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that though, the petitioner sustained fracture of both bones of legs and treated for a long time and spent Rs.75,000/-, the Tribunal has meager amount and that the disability was not taken into consideration by the Tribunal and, therefore, sought to enhance the compensation.

9. Heard Sri P. Suresh Kumar, learned counsel for the appellant. No representation for respondent No.2-Insurance Company. Despite service of notice on respondent No.1-owner, none appears for him.

10. Perused the order and the evidence on record. The medical evidence through P.W.3 and Exs.A.2, A.6, A.7, A.8 and A.10 would show that the petitioner sustained fracture of both bones of both legs and he was treated as inpatient in Government Hospital for about two months and the functional disability was also assessed at 25%, but the Tribunal has discarded Ex.A.2 without assigning any reasons despite the evidence of P.W.3. The petitioner was working as a Mason and the accident had taken place in the year 2002. Therefore,

keeping in view, the monthly income approximately as Rs.3,000/- or Rs.36,000/- per annum, as there is no proof to show that he was earning Rs.6,000/- per month as contended, 25% thereof works out to Rs.9,000/- per annum. When multiplier '11' is applied in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation and another**^[1], permanent loss of earnings due to 25% partial permanent disability comes to Rs.99,000/- and the same is granted. This apart, the petitioner is also entitled to Rs.18,000/- towards temporary loss of earnings @ Rs.3,000/- per month for a period of six months, Rs.25,000/- towards pain and suffering, keeping in view that both the legs were fractured, Rs.10,000/- towards extra nourishment and Rs.3,000/- towards transport charges and accordingly granted.

11. Thus, the petitioner is entitled to a total sum of Rs.1,55,000/- (Rupees one lakh and fifty five thousand) as against Rs.56,500/- 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 8% per annum and the same is maintained on the amount granted by the Tribunal and interest at 7.5% per annum is granted on the enhanced amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir**

Singh and others^[2].

12. 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.

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

A. SHANKAR NARAYANA, J

30th March, 2016

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^[1] (2009) 6 SCC 121

^[2] 2013 ACJ 1403