

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.3142 OF 2005

JUDGMENT:

The petitioner – claimant, feeling dissatisfied with the award of Rs.82,000/- as compensation as against the claim of Rs.1,25,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by order and decree, dated 22.02.2005 in O.P.No.2330 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal – cum – III Additional Chief Judge, City Civil Court, Hyderabad, preferred the instant appeal, under Section 173 of the Act, seeking enhancement of compensation.

2. The appellant is the petitioner, whereas respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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 14.08.2001 at about 04:00 PM, while the petitioner was travelling as pillion rider along with his friend on his scooter bearing registration No.AP-9-L-7950 to attend a function and when they

reached Sirigiripet turning road, since the driver of the lorry bearing registration No.AP-11-T-9408 drove it in a rash and negligent manner while coming in opposite direction from Chincholi dashed the scooter, due to which, the petitioner sustained various fractures to his right leg and foot. The petitioner, claiming that he was a Carpenter by profession earning Rs.3,000/- per month, sought a sum of Rs.1,25,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the offending lorry.

5. Before the Tribunal, respondent No.1 remained *ex parte* and respondent No.2 opposed the claim by filing counter.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues. During enquiry, petitioner examined himself as PW.1 besides examining Dr. S. Venkataramana as PW.2 and marked Exs.A1 to A11 to substantiate the claim laid. On behalf of respondent No.2, no witnesses were examined, but a copy of the Insurance Policy was marked as Ex.B1 on consent.

7. The Tribunal, on appreciation of evidence on record, held issue No.1 in favour of the petitioner. So far

as determination of compensation under issue No.2 is concerned, the Tribunal having taken into consideration the nature of injuries sustained by the petitioner and the disability at 20% as shown in Ex.A5 – Disability Certificate supported by the evidence of PW.2 – Medical Officer, granted Rs.15,000/- towards pain and suffering, Rs.2,000/- towards medical expenses, Rs.5,000/- towards temporary loss of earnings, Rs.54,000/- towards loss of future earning capacity working out the disability at 20% by taking notional income at Rs.15,000/- per annum and applying multiplier '18' since the petitioner was falling in the age group of persons between 25 and 30 years, Rs.4,000/- towards transportation and Rs.2,000/- towards extra nourishment and loss of cloths together, making a total of Rs.82,000/- with interest at 6% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement of compensation on the ground that the Tribunal has not properly appreciated the monthly earnings and profession of the petitioner and the interest granted at 6% per annum was on lower side and the Tribunal ought to have granted interest at 9% per annum.

9. Heard Sri V.Atchuta Ram, learned counsel for the appellant. Despite service of notice on respondent No.2,

none appears.

10. It is no doubt true that notice was not served on respondent No.1, owner of the offending lorry, but as he suffered decree passed by the Tribunal, his absence would not make any difference in adjudicating upon the issue as to the entitlement of petitioner for enhancement of compensation.

11. Learned counsel for the appellant would submit that the petitioner by profession being a carpenter, the Tribunal ought to have taken Rs.3,000/- as his monthly income and even the recent decisional law would support the same, which has taken the same as notional income for non-earning person also.

12. When examined the nature of injuries sustained by the petitioner, which are compound fracture of Talus and lateral Malleolus left, compound fracture of proximal phalanx right little toe and skin grafting, certainly, the amount granted by the Tribunal towards extra nourishment and pain and suffering appears to be on lower side, besides the earnings taken by the Tribunal construing Rs.15,000/- notional income as the income per annum for a person who was a Carpenter. Therefore, there is no need to once again resort to the structural formula as the difference of amount is only Rs.43,000/-

and the petitioner is legitimately entitled to Rs.1,25,000/- as prayed for. Hence, the compensation awarded by the Tribunal is enhanced from Rs.82,000/- to Rs.1,25,000/-. Even the rate of interest granted by the Tribunal at 6% per annum is enhanced to 7.5% per annum in view of the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1]. Thus, the petitioner is entitled to Rs.1,25,000/- with interest at 7.5% per annum from the date of petition till realisation and the same is granted.

13. Accordingly, the instant appeal is allowed. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

April 01, 2016.

MD

^[1] (2013) 9 SCC 54