

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1274 OF 2009

JUDGMENT:

The present appeal is preferred by the petitioner in O.P.No.679 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal – cum – VIII Additional District Judge, Nizamabad, having got dissatisfied with the award of Rs.2,66,300/- as compensation for the injuries he sustained in a road accident, as against the claim of Rs.8,00,000/- laid under Section 166 (1) (a) of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellant is the petitioner, while respondent Nos.1 and 2, who are the owner and insurer of the vehicle that involved in the accident, 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 would show that on 15.05.2003, while the petitioner along with his brother was proceeding on a two wheeler Boxer bearing registration No.AP-25-H-8237 from Talveda to Nizamabad, and when they reached the cross roads of Dasnagar at about 01:00 PM, a lorry bearing registration No.AP-25-T-8933 belonging to respondent No.1 driven at high speed, dashed the motorcycle, due to which, both the petitioner and his brother fell down and received injuries. Immediately, they were shifted to

Government Hospital, Nizamabad. Later, the petitioner was admitted in Amrutha Laxmi Multi Speciality Hospital, Nizamabad, where he was treated till 20.05.2003. Thereafter, he was referred to Yashoda Hospital, Hyderabad, for further treatment. The petitioner, claiming that he has spent Rs.2,50,000/- towards medical treatment and was earning Rs.15,000/- per month on cultivation and doing vegetable business, sought a sum of Rs.8,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the lorry, respectively.

5. Respondent No.1 remained *ex parte* before the Tribunal.

6. Respondent No.2 filed counter opposing the claim.

7. Based on the said pleadings, the Tribunal has framed three issues to determine the compensation as well as the liability.

8. During enquiry, petitioner examined himself as PW.1 besides examining Dr. G. Jaya Prakash as PW.2 and marked Exs.A1 to A12 to substantiate the claim laid. On behalf of respondent No.2, no evidence, either oral or documentary, was let in.

9. The Tribunal, having recorded a finding in favour of the petitioner on issue No.1, holding that the accident did take place due to rash and negligent driving of driver of the lorry, proceeded with issue No.2 and having noticed the injuries as described in Ex.A3 and

having considered the evidence of PW.2, referring to Part II of Schedule I of Workmen's Compensation Act, 1923, in the context of amputation of five toes of left foot of the petitioner, taken the disability at 20%, and disbelieving the stand of the petitioner that he was earning Rs.15,000/- per month, while fixing his income at Rs.3,500/- per month, by applying multiplier '17' and relying on the decision of this Court in **M. Yadagiri Reddy @ Yadagiri v. Rama**¹, wherein it is observed that in injuries cases 1/3rd deduction as prescribed in second schedule of Section 163A of the Act is not permissible, arrived at Rs.1,42,800/- towards permanent partial disability. Besides the same, the Tribunal has granted Rs.10,500/- towards loss of earnings for a period of three months, at the rate of Rs.3,500/- per month, Rs.90,000/- towards medical expenses, basing on Exs.A4, A5, A6 and A12, Rs.5,000/- towards extra nourishment, Rs.3,000/- towards attendant charges and Rs.15,000/- towards pain and suffering. Thus, a total sum of Rs.2,66,300/- was granted as compensation with interest at 7.5% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioner on the ground that the compensation granted by the Tribunal was meagre, that the Tribunal has not properly appreciated the evidence of Medical Officer, and that the Tribunal ought to have taken the earnings of the petitioner at

¹ 2005 (2) ALT 459

Rs.15,000/- per month and, therefore, sought to grant the balance amount.

11. Heard Sri T.V. Kalyan Singh, learned counsel for the appellant. Though respondent No.2 was served, none appears. So far as respondent No.1, owner of the lorry, is concerned, learned counsel for the appellant has made an endorsement in the cause title of the appeal that he is not a necessary party. Since, respondent No.1 remained *ex parte* before the Tribunal and suffered decree, his absence would not make any difference in processing the request herein.

12. It is the submission of the learned counsel for appellant that the Tribunal has not properly appreciated the income of the petitioner and fixed a meagre sum of Rs.3,500/- towards monthly income, though, Ex.A10 was filed showing that the petitioner – appellant owns Ac.5-13 ½ guntas of land.

13. A perusal of the claim petition shows that the claim was laid under Section 166 (1) (a) of the Act, but it appears that there was some typographical mistake in mentioning 'Section 163 (1) (a)' in the order under challenge. Perhaps, instead of mentioning '166', the Section was wrongly described as '163'. Further, a perusal of the order under challenge would show that the Tribunal, observing that no legally acceptable evidence is forthcoming to prove that

Ac.5-13 ½ guntas of land was generating that much income as stated by the petitioner, fixed the monthly income of the petitioner at Rs.3,500/-. Further, a perusal of the evidence of PW.1 would show that there is no indication that he was deriving produce in terms of quantity from the land he owns. However, keeping in view, that the petitioner owns Ac.5-13 ½ guntas of land as per Ex.A10 entries, his earnings can be taken as Rs.4,000/- per month or Rs.48,000/- per annum. Since the Tribunal has recorded a finding accepting the disability of 20% in view of the amputation of all the five toes of left leg of the petitioner, which finding cannot be upset, in view of the relevant entries in Workmen's Compensation Act and since no disability certificate is issued either by the Medical Board or any one, when the same is taken into consideration, by applying multiplier '17', since the age of the petitioner was 30 years, as could be seen from the order under challenge, the loss of future earning capacity works out to Rs.1,63,200/-. Towards loss of earnings for three months, the Tribunal has granted Rs.10,500/-. When, kept in view, the amputation, the petitioner could have taken minimum six months' time to get stabilised. In that view of the matter, Rs.10,500/- granted by the Tribunal is enhanced to Rs.24,000/-, at the rate of Rs.4,000/- per month. The amount of Rs.90,000/- granted towards medical expenditure is confirmed as it is based on medical record submitted by the petitioner. Towards extra nourishment, the Tribunal has granted Rs.5,000/-. The same is enhanced to Rs.10,000/-. Towards pain and

suffering the Tribunal has granted Rs.15,000/- and the same is enhanced to Rs.25,000/-, keeping in view the amputation of five toes. The amount of Rs.3,000/- granted by the Tribunal towards attendant charges is maintained. Towards transportation, a sum of Rs.2,000/- is granted. Thus, the petitioner is totally entitled to Rs.3,17,200/- with interest at 7.5% per annum as awarded by the Tribunal in tune with the rate of interest at 7.5% per annum awarded by the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**²

14. Thus, the appeal is allowed in part enhancing the compensation from Rs.2,66,300/- to Rs.3,17,200/- with interest at 7.5% per annum from the date of petition till realisation.

15. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

August 19, 2016.
MD

² (2013) 9 SCC 54