

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1632 OF 2005

JUDGMENT:

Respondent No.3 - Insurance Company preferred the instant appeal aggrieved by the award of Rs.2,54,512/- as compensation with interest at 12% per annum by order and decree, dated 24.03.2004, in O.P. No.295 of 2000 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum – II Additional District Judge, West Godavari District at Eluru, on the ground that the amount awarded was on higher side.

2. The appellant viz., United India Insurance Company Limited, Khammam District, is respondent No.3 in the O.P. before the Tribunal, while respondent No.1, who is the claimant, is the petitioner and respondent Nos.2 and 3, who are driver and owner, respectively, of the Tipper bearing No.AP-20-T-8221, that involved in the accident, are respondent Nos.1 and 2, respectively.

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 05.02.2000, while the petitioner was returning to his home, having completed his work at office, for taking lunch on his bicycle and when he reached near Fire Office, at about

1:15 PM, tipper bearing No.AP-20-T-8221 driven at high speed and in a rash and negligent manner, hit him, due to which he sustained grievous injuries. He was immediately shifted to Government Hospital, Eluru, where he has undergone surgical interventions and steel rod was inserted in his right leg. Stating that he has spent Rs.50,000/- towards medicines and on account of the injuries he sustained, he became permanently disabled, sought Rs.3,00,000/- towards compensation by introducing an amendment to the claim portion, as he originally laid the claim for Rs.1,00,000/-.

5. Respondent Nos.1 and 2, who are owner and driver, respectively, of the offending vehicle remained *ex parte* before the Tribunal.

6. Respondent No.3 - insurer opposed the claim by raising various pleas.

7. Based on the pleadings, three (3) issues were framed by the Tribunal in order to determine the compensation as well as negligence in taking place of accident.

8. During enquiry, the petitioner besides examining himself as PW.1 has examined the Medical Officer Dr. A.V.R. Mohan as PW.2 and marked Exs.A-1 to A-8. On behalf of the insurer, no evidence, either oral or

documentary, was let in.

9. The Tribunal having accepted 35% partial permanent disability, basing on the evidence of PW.2 and taking monthly salary of the petitioner, who was working as Junior Accountant in the District Treasury Office, at Rs.4,565/-, deducted $\frac{2}{3}$ rd of the annual income and arrived at Rs.36,520/- and by applying multiplier '16', since the petitioner was 29 years old, worked out his earnings at Rs.5,84,320/- and arrived at Rs.2,04,512/- (Rs.5,84,320/- x 35%) towards 35% partial permanent disability. Besides the same, the Tribunal has awarded a sum of Rs.25,000/- towards medical expenses, Rs.5,000/- towards temporary loss of income and Rs.20,000/- towards pain and suffering and mental agony, thus making a total of Rs.2,54,512/- as compensation to which the petitioner is entitled and, accordingly, granted the same with interest at 12% per annum.

10. Aggrieved by the aforesaid order, the insurer preferred the instant appeal contending in the grounds of appeal that the Tribunal, somehow, overlooked the fact that no disability was caused to the petitioner and there was no loss of income as he has been continuing in service and earning salary. It is also stated that the multiplier '16' applied by the Tribunal is not correct and the Tribunal ought to have applied lesser multiplier as the

petitioner was aged 29 years at the relevant time and even the interest at 12% per annum granted by the Tribunal is arbitrary and, therefore, sought to set aside the order and decree under challenge.

11. Heard Sri E. Venugopal Reddy, learned counsel for the appellant, Sri Nimmagadda Satyanarayana, learned counsel for respondent No.1 and Sri S. Balachander, learned counsel for respondent No.3. Though notice is served on respondent No.2, none appears.

12. Perused the order under challenge and the evidence, both, oral and documentary, let in by the petitioner.

13. Ex.A2 is the injury certificate showing the fracture of lower 1/3rd of right leg up to medial malleolus exposing broken bones and muscle with bleeding and a simple injury and the Medical Officer issued the certificate from the Government Hospital, Eluru, on the requisition made by the concerned Station House Officer, stating that the first injury was grievous in nature, basing on which, the Tribunal considered the partial permanent disability at 35%. Since the Medical Officer, who was examined as PW.2, proved the Disability Certificate issued by the Medical Board marked as Ex.A5, the Tribunal by taking the age of the petitioner as 29 years, the disability at 35%,

monthly income at Rs.4,565/- or the annual income at Rs.54,780/- and by applying multiplier '16', had arrived at Rs.2,04,512/- towards loss of future earning capacity. Besides the same, the Tribunal has granted certain other amounts, they being Rs.25,000/- towards medical expenses, Rs.5,000/- towards 75 days loss of leave salary and Rs.20,000/- towards pain and suffering, making a total of Rs.2,54,512/-.

14. Learned counsel for the appellant contended that there could not be any loss of future earning capacity since the petitioner was continuing in service and therefore, the Tribunal erred in assessing the loss of future earnings at Rs.2,04,512/-, but that is not a sustainable ground in view of the fact that, certainly, the injury with which the petitioner had suffered partial permanent disability would affect his longevity and therefore, the compensation awarded by the Tribunal is confirmed. However, the Tribunal has granted interest at 12% per annum, which is on higher side, as no reasons, such as the prevailing rate of interest during the period when the accident had occurred, were indicated, the rate of interest is reduced 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].

15. Accordingly, the appeal is allowed in part. There

shall be no order as to costs.

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

A. SHANKAR

NARAYANA, J

April 13, 2016.

MD/PV

[\[1\]](#) (2013) 9 SCC 54