

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1519 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.33,000/- as compensation by the order dated 05.11.2004 in M.V.O.P. No.1220 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-X Additional District Judge (Fast Track Court), Guntur (for short, 'the Tribunal') as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') 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 the owner and insurer of the auto-rickshaw bearing registration No.AP 24T 8881, 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 of this case are not in dispute.

5. Heard Sri T.S.Rayalu, learned counsel for the appellant-petitioner, and Sri A.V.K.S.Prasad, learned Standing Counsel for respondent No.2-Insurance

Company. Respondent No.1, though, served with notice, none appears for him. However, he remained *ex parte* before the Tribunal.

6. Learned counsel for the appellant-petitioner would submit that no appeal is preferred by the Insurance Company, as no notice was served on the appellant-petitioner.

7. Perused the order and the evidence on record. The manner in which the accident had taken place is not in dispute. The liability fastened by the Tribunal on the Insurance Company is forthcoming from the order as well as the decree. Now, the only short question is whether the amount awarded by the Tribunal as compensation is just and adequate or whether the appellant-petitioner is entitled to enhancement of compensation.

8. It is clear from the medical record filed by the petitioner, marked as Ex.X.1, he was treated as inpatient in emergency unit when initially he was admitted and the injuries sustained by him are described in Ex.A.2 thus:

"1) A diffuse tender swelling over the lt. axilla of about 10x10 cm.

2) A diffuse tender swelling of about 15x10 cm over the right axilla.

3) A tender diffuse swelling about 15x10 cm over the abdomen tender + guarding +."

Though, no bony injury was found out of the three injuries, but however, the petitioner had undergone surgical intervention for the injury sustained on the abdomen, which was treated as grievous injury, which details are elaborated in paragraph No.5 of order passed by the Tribunal. The Tribunal has taken 30% disability basing on the evidence of P.W.2 and the notional income at Rs.10,000/- and the age of the petitioner as 50 years and applied multiplier '11' and arrived the compensation towards partial permanent disability at Rs.33,000/- and awarded the same without awarding any amount towards pain and suffering, extra nourishment and incidental charges. Be that as it may, the petitioner was aged 48 years on the date of accident, relevant multiplier factor is '13' as provided in the table formulated in the judgment of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1]. Though, the Tribunal estimated the notional income at Rs.15,000/-, but somehow, took Rs.10,000/- without assigning any reason. Therefore, the amount of Rs.15,000/- is taken as notional income. When the multiplier '13' is applied, the annual loss of earnings works out to Rs.1,95,000/- (Rs.15,000/- x 13) and 30% thereof works out to Rs.58,500/-. Towards pain and suffering, the petitioner is entitled to Rs.10,000/-. Towards extra nourishment, a sum of Rs.5,000/- and towards attendant and transport

charges, a sum of Rs.3,000/- are granted.

9. Thus, the petitioner is entitled to a total sum of Rs.76,500/- (Rupees seventy six thousand and five hundred) as against Rs.33,000/- 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 9% per annum and the same is maintained on the amount granted by the Tribunal and the interest at 7.5% per annum is granted on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2].

10. 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.

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

NARAYANA, J

A. SHANKAR

9th August, 2016

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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2013 ACJ 1403