

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.3173 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.3,68,873/- as compensation by the order and decree, dated 16-03-2004, in O.P. 933 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal – cum –

I Additional District and Sessions Judge, East Godavari District at Rajahmundry (for short 'the Tribunal'), as against the claim of Rs.6,00,000/- made under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioner under Section 173 of the Act, seeking enhancement of compensation.

2. The appellant herein is the petitioner in O.P. before the Tribunal while respondent No.1, who is driver, and respondent No.2 – erstwhile Andhra Pradesh State Road Transport Corporation, which is owner of an RTC bus bearing registration No.AP 9Z 5084, respectively, 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 the petitioner sustained injuries in a road accident, wherein an RTC bus was involved belonging to respondent No.2 and respondent No.1 is no other than the driver of the said vehicle at the relevant time.

5. The Tribunal having framed three issues basing on the pleadings placed before it and examining PWs.1 to 3 on behalf of the petitioner and RW.1 on behalf of respondents that being respondent No.1 and marking Exs.A-1 to A-10 on behalf of the petitioner, fixing monthly income at Rs.2,000/- considering the occupation of petitioner as goldsmith and taken disability at 60% as certified by the doctor and granted Rs.69,673/- towards medical expenses basing on bunch of bills marked as Ex.A-7; Rs.3,000/- towards loss of earnings, Rs.30,000/- towards pain and suffering; Rs.5,000/- towards extra nourishment; Rs.2,000/- towards transport charges and Rs.2,59,200/- towards loss of future earning capacity on account of disability with interest at 9% per annum thereon.

6. It is the aforesaid order which is under challenge in the instant appeal on the ground that the Tribunal without proper appreciation of evidence, more particularly, evidence of PW.3, who has spoken that PW.1 was earning Rs.6,000/- on his goldsmithery, and under other heads, the Tribunal has granted meager sums, sought to grant balance amount.

7. Heard Sri A. Nagendra Rao, learned counsel for the appellant, and Sri G. Simhadri, learned counsel for respondent No.1. No representation for respondent No.2 – APSRTC.

8. It is brought to the notice of this Court by the learned counsel for respondent No.1 as well as appellant that respondent No.2 - APSRTC has already preferred an appeal challenging the instant award and decree in C.M.A. No.1943 of 2004 before this Court, and the same was disposed of, by order, dated 17-06-2010,

and a copy thereof is also placed on record by the learned counsel for the appellant stating that this Court in paragraph No.10 has observed that the petitioner since was a goldsmith by profession, his monthly income can be taken as Rs.3,000/- and since he was suffering from 60% disability, it would come to Rs.1800/- and, therefore, loss of his future earnings would come to Rs.1800/- x 12 x 17, equivalent to Rs.3,67,200/-, and this Court also computed other sums towards medical expenditure, pain and suffering etc. mentioned in the above and even shown the total compensation at Rs.4,76,873/-. The observations of this Court contained in paragraph No.10 read thus:

“10. As per the judgment of the Supreme Court in **SARLA VERMA vs. DELHI TRANSPORT CORPORATION [AIR 2009 Supreme Court 3104]**, the appropriate multiplier which can be applied to the injured-claimant is ‘17’. But the Tribunal has wrongly applied the multiplier ‘18’. As per the evidence of the Doctor who was examined as P.W.1, the claimant was suffering from 60% permanent disability. The Tribunal assessed the annual income of the claimant to be Rs.24,000/- i.e. Rs.2,000/- per month. The claimant claimed that he was earning about Rs.5,000/- per month as a goldsmith. The claimant also got examined P.W.3 to prove his occupation and income. P.W.3 deposed that the claimant was working as goldsmith and was earning about Rs.6,000/- per month. Since the claimant was a goldsmith by profession his monthly income can be taken as Rs.3,000/- per month and, since he was suffering from 60% permanent disability, it would come to Rs.1800/- and, therefore, the loss of his future earnings would come to Rs.1,800/- x 12 x 17 = Rs.3,67,200/-. So, the total amount of compensation payable to the claimant would come to Rs.3,67,200/- + Rs.69,673/- + Rs.3,000/- + Rs.30,000/- + + Rs.5,000/- + Rs.2,000/- = Rs.4,76,873/-.”

9. In the said order, this Court then made an observation that since the Tribunal granted only Rs.3,68,873/- which was much

lower than what the petitioner is actually entitled to, and having observed that there was no reason to interfere with the award, dismissed the appeal. When this Court has already computed the compensation to which the petitioner is really entitled to at Rs.4,76,873/-, this Court is now bound by the very same observation on the determination of compensation, and certainly, dismissal of C.M.A. No.1943 of 2004 would not come in the way.

Therefore, the amount of Rs.4,76,873/-[i.e., Rs.3,67,200/- towards loss of future earning capacity + Rs.69,673/- towards medical expenses based on Ex.A-7 + Rs.3,000/- towards loss of earnings + Rs.30,000/- towards pain and suffering + Rs.5,000/- towards extra nourishment + Rs.2,000/- towards transport charges], as arrived at by this Court in the aforesaid appeal, is granted to the petitioner herein as compensation.

10. Concerning rate of interest, the Tribunal has granted the same at 9% per annum and the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.1,08,000/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others** ^[1].

11. In the result, the appeal is allowed in part, and the order and decree, dated 16-03-2004, in O.P. No.933 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.4,76,873/- (Rupees four lakhs seventy six thousand eight hundred and seventy three) from Rs.3,68,873/- with interest at the rate of 9% per annum on the amount of Rs.3,68,873/- granted by

the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.1,08,000/-(Rupees one lakh and eight thousand) from the date of petition till realization. There shall be no order as to costs.

12. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

February 22, 2016.

Mgr

[\[1\]](#). 2013 ACJ 1403