

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1038 OF 2005

JUDGMENT:

The instant appeal is preferred by the petitioner in O.P. No.1081 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal') requesting to grant Rs.4,39,067/- the amount determined by the Tribunal as fair compensation, but restricted to Rs.2,50,000/- with interest at 9% per annum by the order dated 01.07.2002 as the petitioner laid claim for Rs.2,50,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the appellant-petitioner.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of lorry bearing registration No.MP 23D 1434, respectively, 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 in brief are that the petitioner was working as a cleaner on the lorry bearing registration No.MP 23D 1434, owned by respondent No.1 and insured

with respondent No.2, and on 08.10.1996 when the said lorry was proceeding to Miryalaguda from Malleshpally and reached Sangaram bus stage, the driver since drove it in a rash and negligent manner dashed a lorry bearing registration No.AP 21T 5769 from its behind, which lorry was parked by the side of the road, due to which the petitioner sustained serious injuries. He was immediately shifted to Osmania General Hospital, where he was treated as inpatient from 09.10.1996 to 09.12.1996 and again he was admitted in hospital on 24.06.1997 and discharged on 28.07.1997 and the driver of the lorry, in which he was working as a cleaner, was prosecuted by the police, Peddavura in C.C. No.886 of 1996. The petitioner claims that his left leg was amputated and he became completely disabled and unable to earn anything on account of the said disability, and, therefore, sought Rs.2,50,000/- quantifying it as Rs.30,000/- towards special damages and Rs.2,20,000/- towards general damages.

5. Respondent No.1-owner of the lorry remained *ex parte* before the Tribunal. Respondent No.2-insurer of the lorry opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining the eye witness to the accident as P.W.2 and marked Exs.A.1 to A.12 to

substantiate his claim; whereas, on behalf of respondent No.2, no witnesses were examined, but marked a copy of insurance policy as Ex.B.1 on consent.

7. On appraisal of evidence on record, the Tribunal held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal, though, there was no medical evidence making observation that the left leg was amputated upto knee level, which was also deposed to by the petitioner as P.W.1 and treating the disability at 100% in view of the profession of the petitioner and the monthly earnings at Rs.2,000/-, the age at 30 years, taken multiplier factor 16.51 and applied the same and arrived the future loss of earning capacity at Rs.3,96,240/- (Rs.2,000/- x 12 x 16.51). Besides the same, the Tribunal also granted Rs.11,827/- towards medical expenses, Rs.1,000/- towards transport charges and granted Rs.30,000/- general damages. Thus, arrived the total compensation at Rs.4,39,067/-, but restricted the same to Rs.2,50,000/- with interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal requesting to grant the balance amount out of Rs.4,39,067/- on the ground that the Tribunal arrived at the said sum terming it as fair compensation determined by it.

9. No representation for the appellant. Heard Sri S. Daiva Bhimanam, learned Standing Counsel for

respondent No.2-Insurance Company. In the grounds of appeal, the appellant has endorsed that respondent No.1 is not a necessary party. Respondent No.1 has already suffered decree having been remained *ex parte*. Therefore, his absence in the instant appeal is of no consequence in deciding the appeal.

10. Learned Standing Counsel for respondent No.2 fairly concedes that no appeal was preferred by the Insurance Company challenging the amount awarded by the Tribunal or determined by the Tribunal or in regard to rate of interest or on any other grounds. In such an event, certainly, the amount determined by the Tribunal cannot be interfered with. In the instant case, the petitioner laid the claim for Rs.2,50,000/- only, but, certainly, he cannot be deprived of 'Rs.4,39,067/-' arrived by the Tribunal though, it exceeds the claim made by him, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**^[1], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**^[2] and **Rajesh and others v. Rajbir Singh and others**^[3], wherein, it was held that it is duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made.

11. Thus, the petitioner is entitled to a total sum of

Rs.4,39,067/- (Rupees four lakh thirty nine thousand and sixty seven hundred) as against Rs.2,50,000/- granted by the Tribunal towards compensation and the same is accordingly granted. However, the petitioner is directed to pay Court fee on the excess amount granted by this Court than the claim within a period of three months from today. 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 interest at 7.5% per annum is granted on the enhanced amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 3). The petitioner-appellant is permitted to withdraw the entire amount of compensation.

12. Accordingly, the instant appeal is allowed 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.

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

A. SHANKAR NARAYANA, J

28th March, 2016

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[\[1\]](#) AIR 2003 SC 674

[\[2\]](#) 2012 ACJ 191 (SC)

[\[3\]](#) 2013ACJ1403 = 2013(4)ALT35