

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A No. 1304 OF 2009

JUDGMENT:

On the ground that the award of Rs.67,604/- granted by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad (for brevity 'the Tribunal') as compensation by the judgment dated 14.10.2004, in O.P.No.1247 of 1998, as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, is meagre, the petitioner in the said O.P preferred the present appeal seeking enhancement of compensation.

2. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.

3. Heard Sri P. Radhive Reddy, learned counsel for the appellant and Sri Katta Laxmi Prasad, learned Standing Counsel for the second respondent. Though, service was completed on the first respondent, none appears for him.

4. The fact-situation is not in dispute. But, however, in regard to the grievous injury sustained by the petitioner, Sri Katta Laxmi Prasad, learned Standing Counsel for the second respondent – insurance company resists the enhancement requested on the ground that Dr. T. Narsing Rao, who was examined as P.W.2 on behalf of the petitioner, was the person who issued Ex.A.3- wound certificate from Government Hospital, Nizamabad, and that the Tribunal has made certain observations in regard to Ex.A.3 in paragraphs 15 to 17 of its judgment and in fact, it discarded the disability certificate marked as

Ex.C.1, wherein P.W.2 has assessed the disability at 65% for fracture of femur right, more particularly, when the injury was treated consecutively.

5. The Tribunal has granted Rs.25,000/- towards disability, Rs.5,000/- towards pain and suffering and Rs.19,604/- towards medical expenses. Besides the same, the Tribunal has also granted Rs.18,000/- towards loss of income for a period of six months i.e., @ Rs.3,000/- per month on the premise that the petitioner was a driver by profession, basing on Ex.A.9-driving licence. Thus, in total, the Tribunal awarded a sum of Rs.67,604/- towards compensation.

6. It is no doubt true, that the disability certificate itself was discarded, but, the Tribunal, somehow, granted Rs.25,000/- towards disability without specifically mentioning, whether it was towards temporary disability or otherwise. Towards pain and suffering, only Rs.5,000/- was granted, though, the petitioner sustained fracture of femur (right) besides crack fracture of tibia, as per the evidence of P.W.2. Hence, the amount of Rs.25,000/- granted by the Tribunal is treated as compensation towards the injuries. Further, no amount towards extra nourishment was granted. Therefore, a sum of Rs.5,000/- is granted towards extra nourishment.

7. In the result, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.67,604/- to Rs.72,604/- (Rupees seventy two thousand six hundred and four only). The appellant is entitled to interest on the compensation of Rs.67,604/-, awarded by the Tribunal, @ 9% per annum, and on the

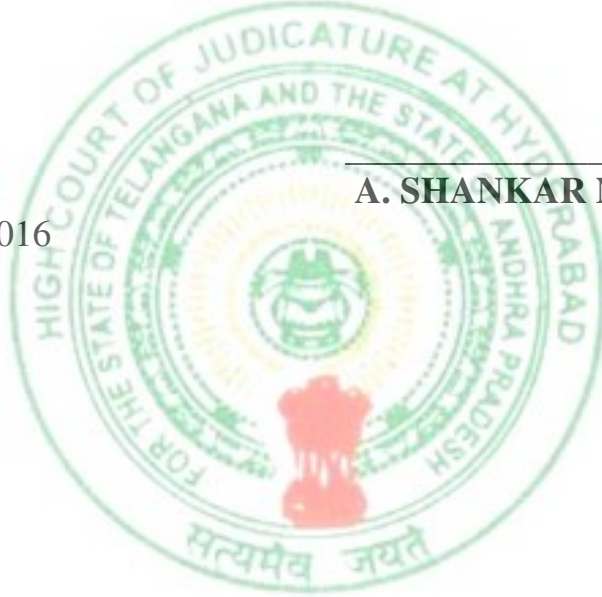
enhanced compensation of Rs.5,000/- @ 7.5% per annum, from the date of petition till realisation, as per the decision of the Apex Court in *Rajesh and others v. Rajbir Singh and others*¹.

8. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation as stated supra. There shall be no order as to costs.

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

Date: 31.08.2016
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A. SHANKAR NARAYANA, J



¹ 2013ACJ1403 = 2013(4)ALT35