

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.599 OF 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.42,000/- as compensation, as against the claim of Rs.1,00,000/- laid under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act'), claimant preferred the instant appeal challenging the order dated 15.10.2004 in M.V.O.P.No.825 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge, Guntur (for short, 'the Tribunal'), seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 & 2 herein, the owner and insurer of the auto bearing registration No.16-X-8986, are respondent Nos.1 & 2 respectively, in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 27.04.2002 at about 5.00 p.m., while the petitioner was travelling in an auto bearing registration No. 16 X 8986, belonging to respondent No.1, to return to Mangalagiri from Tenali and when it reached near Duggirala old lakulu, since the driver of the auto drove it in a rash and negligent manner at high speed,

it dashed against the wall of the bridge, due to which, it turned upside down causing serious injuries to the petitioner. She was shifted to Government Hospital, Tenali. She was treated as inpatient from 27.04.2002 till 07.05.2002. According to her, she received fracture of her right shoulder and other injuries to her left elbow, left knee, left upper limb and other parts of the person. She, therefore, laid a claim for Rs.1,00,000/- as compensation.

5. Respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim by filing a detailed counter.

6. Basing on the said pleadings, the Tribunal framed three issues. During enquiry, the petitioner examined herself as P.W.1 and Dr. J. Hanumantharao as P.W.2 and marked Exs.A1 to A5. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

7. On appreciation of evidence on record, the Tribunal recorded finding in favour of the petitioner on relevant issues, holding that due to rash and negligent driving of the driver of the auto, the accident had occurred. On issue No.3 as regards the determination of compensation, basing on the description of injuries under Ex.A3-wound certificate and the evidence of P.W.2-Medical Officer, who has treated the petitioner and who asserted that on account of the injuries sustained by her, she suffered

25% partial permanent disability, and by taking the notional income at Rs.15,000/- per annum as provided in the Second Schedule to Section 163-A of the Act and the age of the petitioner as 60 years as on the date of accident, the Tribunal applied multiplier "8" and computed loss of earnings at Rs.30,000/- ($\text{Rs.15,000} \times 8 \times 25\% = 30,000/-$). Besides the said amount, the Tribunal has granted Rs.12,000/- towards injuries and, thus, granted a total sum of Rs.42,000/- with interest at 9% per annum from the date of petition till the date of deposit.

8. On the ground that meager amount was granted by the Tribunal, the instant appeal is preferred contending in the grounds that the Tribunal went wrong in not granting amounts under other heads, in observing that the disability sustained by the petitioner was limited to two years and even the interest ought to have been granted at 12% against 9% per annum granted by the Tribunal.

9. Heard Sri N.Subba Rao, learned counsel for the appellant. No representation for respondent No.2-Insurance Company. Though notice sent to respondent No.1 was not served, it was treated as served in view of the observation made by this Court on 02.01.2012 that in case notice is sent to the same address that was furnished in the O.P., and if for any reason, it is not served, the Registry shall treat the same as served, once the proof as to taking out notice is filed.

10. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioner. The Tribunal has accepted 25% disability basing on the evidence of P.W.2. That finding recorded by the Tribunal since not challenged by the Insurance Company, the same remains on record attaining finality. The Tribunal has rightly taken Rs.15,000/- per annum as the notional income of the petitioner, in the absence of any evidence to show that she was earning Rs.100/- per day on fruits business, and applied multiplier “8” considering the age of the petitioner as 60 years. However, in view of the decision of the Hon’ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1], for the age group of persons between 56 to 60 years, the relevant multiplier provided in the Schedule formulated by the Hon’ble Apex Court is “9” and when the same is applied, loss of future earning capacity of the petitioner works out to Rs.33,750/- (15,000 x 9 x 25%). The Tribunal has granted Rs.12,000/- towards injuries and the same is treated as the amount towards pain and suffering. Towards extra nourishment, no amount is granted by the Tribunal. Keeping in view the first injury, which was grievous in nature, accounting for 25% partial permanent disability, a sum of Rs.10,000/- is granted. Besides the same, a sum of Rs.2,000/- towards transportation charges and Rs.3,000/- towards attendance charges are also granted.

11. Thus, the petitioner is entitled to a total sum of Rs.60,750/- (Rupees sixty thousand seven hundred and fifty only), as against Rs.42,000/- granted by the Tribunal, towards compensation and the same is, accordingly, granted.

12. So far as the rate of interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount of Rs.42,000/- granted by the Tribunal, and on the enhanced amount, the petitioners are entitled to interest at 7.5% per annum from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others** [\[2\]](#).

13. 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.

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

A. SHANKAR NARAYANA, J

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

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