

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1395 OF 2005

JUDGMENT:

The instant appeal is preferred seeking enhancement of compensation on the ground that the compensation awarded by the Tribunal at Rs.73,500/-, as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, by order and decree, dated 16.12.2004, in O.P.No.447 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, Warangal, was very meagre.

2. The appellant is the petitioner, whereas respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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 would show that on 10.02.2003 at about 07:30 PM, while the petitioner was returning from Parkal to his Village in an Auto rickshaw bearing registration No.AP-36-U-9363 and when it reached the curve at the outskirts to Mylaram Village, since the driver of the Auto rickshaw driven it in a rash and negligent manner and was unable

to control the speed, the Auto turned upside down, due to which, the petitioner sustained severe injuries and immediately, he was shifted to MGM Hospital, Warangal. The petitioner, claiming that he suffered 100% disability and was unable to carry out the agricultural activity, sought to grant Rs.3,00,000/- as compensation. As could be seen from the record, initially the claim was laid for Rs.1,00,000/- and later, it was amended enhancing it to Rs.3,00,000/-

5. Before the Tribunal, respondent No.1 filed counter stating that he was holding valid licence, the Auto was insured with respondent No.2 and the policy was in force as on the date of accident and therefore, sought to dismiss the claim petition against him.

6. Respondent No.2 opposed the claim by raising various pleas.

7. Based on the said pleadings, the Tribunal has framed three issues in order to determine the compensation and liability. During enquiry, petitioner examined himself as PW.1 besides examining Dr. P. Kali Prasad Rao, Orthopaedic Surgeon, as PW.2 and marked Exs.A1 to A8 apart from Ex.X1 – Case Sheet to substantiate the claim laid. On behalf of the respondents, no evidence, either oral or documentary, was let in.

8. The Tribunal, basing on the evidence of PW.1 supported by Exs.A1 and A2, which were the attested copies of F.I.R. and Injury Certificate, held issue No.1 in favour of the petitioner. On issue No.2, referring to Ex.A2 – Injury Certificate and the injuries mentioned therein, among which one was simple and others were grievous, and the treatment the petitioner has undergone in MGM Hospital, Warangal, granted Rs.1,000/- towards transportation, Rs.7,500/- towards loss of earnings for three months at Rs.2,500/- per month, Rs.3,000/- towards medical expenses, Rs.10,000/- towards pain and suffering, Rs.25,000/- to each fracture, making a total of Rs.50,000/- towards fractures, and Rs.2,000/- towards simple injuries, while discarding the disability at 60% shown in Ex.A7, thus, a total sum of Rs.73,500/- was granted with interest at 9% per annum, as against the claim of Rs.3,00,000/- on the ground that the petitioner did not make out a case for grant of Rs.3,00,000/- as compensation.

9. It is the aforesaid order which is under challenge in the instant appeal on the grounds that the Tribunal did not properly appreciate the evidence on record and that the Tribunal ought not to have discarded Ex.A7, showing the disability at 60% and therefore, sought to grant the balance amount.

10. Heard Sri N.J. Sunil Kumar, learned counsel for respondent No.2. Respondent No.1 refused to receive the notice and therefore, he is deemed to have been served. On behalf of the appellant, though Sri B. Narayana Reddy, learned counsel, filed vakalat, it is represented that he has been appointed as panel counsel for Insurance Company and therefore, intended to give up the vakalat. However, learned counsel for respondent No.2 - Insurance Company represented to take up the matter and decide on merits. That is how the matter is taken up for disposal based on merits.

11. Perused the order under challenge and the evidence on record.

12. The evidence of PW.2 – Medical Officer would show that the petitioner sustained comminuted fracture of left femur and another comminuted fracture of left patella and the Medical Board of MGM Hospital, Warangal, has issued Ex.A7 – Disability Certificate showing the disability at 60%. His evidence also shows that the petitioner had difficulty to sit and raise the position. It is also stated that it would have taken about six months for the petitioner to attend to his normal activities. Of course, he admits in the cross examination that while determining the percentage of disability shown in Ex.A7, the range prescribed was not followed in it. Further, the degree of restriction of movements is not mentioned in Ex.A7 and on the top of it,

it was captioned that it cannot be used for judicial purpose, but still, to know the inconvenience which the petitioner had suffered, the Certificate can be used.

13. Coming to the income of the petitioner, no material is placed to show that he owns lands and is deriving income of Rs.3,000/- per month at an average, in which case, certainly, even if the notional income is taken at Rs.15,000/- per annum and disability at 60%, by applying multiplier '16', since the petitioner was aged 35 years, it works out to Rs.1,44,000/- to which the petitioner is entitled. This apart, an amount of Rs.1,000/- granted by the Tribunal towards transport charges, Rs.7,500/- towards temporary loss of earnings, Rs.3,000/- towards medical expenses and Rs.10,000/- towards pain and suffering are maintained. The petitioner is also entitled to Rs.5,000/- towards extra nourishment and Rs.3,000/- towards attendant charges. Thus, the petitioner is totally entitled to Rs.1,73,500/-. The interest awarded by the Tribunal at 9% per annum is maintained on the original amount of Rs.73,500/- awarded by the Tribunal and on the enhanced amount, the petitioner is entitled to interest at 7.5% per annum from the date of petition till realisation, as per the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

14. Accordingly, the instant appeal is allowed in part.

There shall be no order as to costs.

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

A. SHANKAR

NARAYANA, J

April 01, 2016.

MD

[\[1\]](#) (2013) 9 SCC 54