

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1327 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant-petitioner, aggrieved by the order and decree dated 13.12.2007, passed in O.P.No.360 of 2005 by the Chairman, Motor Accidents Claims Tribunal (Principal District Judge), Nalgonda District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.1,20,173/- was awarded towards compensation with interest @ 7.5% per annum, as against the claim of Rs.3,00,000/- made under Section 166 of the Act, for the injuries sustained by him in a motor accident that occurred on 08.11.2004 at 7-30 a.m., seeking enhancement of compensation.

2. The appellant herein is petitioner, respondent No.1 – owner of the offending Auto bearing No.AP11 ABTR 9244 is respondent No.1, and respondent No.2 – National Insurance Company Limited is respondent No.2, in O.P.No.360 of 2005. For the sake of convenience, the parties are referred to as they were arrayed in O.P.No.360 of 2005 before the Tribunal.

3. The fact situation, the manner in which the accident had occurred, including the nature of injuries sustained by

the petitioner, and the responsibility for the accident are not in dispute.

4. The Tribunal, having held both the issues in favour of the petitioner, basing on the evidence of P.W.2 – Dr. S. Anjaiah, Orthopaedic Surgeon, who treated the petitioner, and the entries made in Ex.A.2 – Attested copy of Injury Certificate, found that the petitioner sustained seven injuries, amongst which, 3 are simple in nature, and 4 are grievous injuries, and granted Rs.2,000/- for each simple injury and Rs.15,000/- towards each grievous injury. The Tribunal has also granted Rs.49,173/- towards Medical expenses, however, the Tribunal has not accepted 40% partial permanent disability shown under Ex.A.8 – Disability Certificate, on the ground that the Doctor, who examined the petitioner and issued Ex.A.8, was not examined by the petitioner. Further, the Tribunal granted a sum of Rs.5,000/- towards pain and suffering. Thus, the Tribunal granted a total compensation of Rs.1,20,173/- with interest @ 7.5% per annum.

5. Heard Smt. K. Lalitha, learned counsel for the appellant – petitioner, and Sri S.A.V. Ratnam, learned Standing Counsel for respondent No.2 – National Insurance Company Limited.

6. Perused the order under challenge and evidence available on record.

7. The only submission made by the learned counsel for appellant - petitioner is that the compensation granted by the Tribunal is on lower side and the Tribunal ought not to have discarded Ex.A.8 - Disability Certificate issued by P.W.2 - Doctor, certifying that the petitioner sustained 40% disability and ought to have considered the same.

8. As could be seen from the documentary evidence, the petitioner has not filed any document showing his occupation and the income derived therefrom. Even with regard to the earnings also, there is no tangible evidence, so as to apply the structural formula. Even if the disability under Ex.A.8 is considered to be true, generally the notional income of Rs.15,000/- per annum will be taken and since the petitioner was 44 years old, as on the date of accident and making the claim, the appropriate multiplier would be '14'. Thus, the amount that would be arrived towards loss of future earning capacity would not be that much. Even otherwise also, the finding recorded by the Tribunal cannot be brushed aside, as P.W.2 - Doctor, who assessed the disability, is the relevant witness, giving an opportunity to the 2nd respondent – insurer to cross-examine him as to how he arrived at the conclusion that the petitioner sustained 40% disability.

9. However, when looked at the amounts awarded by the Tribunal on different heads, certainly, they appear to be on

lower side. Therefore, for each simple injury, the amount of Rs.2,000/- each granted by the Tribunal is enhanced to Rs.3,000/- each; for the grievous injuries, keeping in view the impact of crush injuries on the left side of face and temporal region, severe crush injury to left ear, and fracture of mandible, severe compacted supracandylar fracture of left knee femur, the amount of Rs.60,000/- granted towards the said grievous injuries, numbering to 4, is enhanced to Rs.1,00,000/-. The amount of Rs.49,173/- granted by the Tribunal towards medical expenses is maintained. The amount of Rs.5,000/- granted by the Tribunal towards pain and suffering is enhanced to Rs.15,000/-. No amount is granted towards extra-nourishment, therefore, a sum of Rs.10,000/- is awarded under that head, keeping in view the nature of injuries sustained by the petitioner. Towards transport charges, a further sum of Rs.10,000/- is granted. Thus, the petitioner is entitled to a total compensation of Rs.1,93,173/-, which is rounded off to Rs.1,93,200/- (Rs.49,173/- + Rs.9,000/- + Rs.1,00,000/- + Rs.15,000/- + Rs.10,000/- + Rs.10,000/- = Rs.1,93,173/-), as against the sum of Rs.1,20,173/- granted by the Tribunal, with interest @ 7.5% per annum on the enhanced amount also.

10. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.1,20,173/- to Rs.1,93,200/- (Rupees one lakh ninety three

thousand two hundred only) with interest @ 7.5% per annum on the enhanced amount of Rs.73,000/- (Rupees seventy three thousand only) also, which was the rate of interest awarded by the Tribunal on the amount granted by it. No order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

23.09.2016.

Msr



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