

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1700 of 2009

JUDGMENT:

The instant appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), seeking enhancement of compensation, having got dissatisfied with the amount of Rs.89,500/- granted as compensation by the order and decree, dated 04.08.2005, in M.V.O.P.No.277 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge (Fast Track Court), Nizamabad at Bodhan, as against the claim of Rs.3,00,000/- laid under Section 166 of the Act by the petitioner-claimant, for the amputation of his right leg below the knee level in a road accident.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who represent the erstwhile Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') in the capacity of the Managing Director of Musheerabad and the Depot Manager of Banswada Depot, respectively, were respondent Nos.1 and 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 12.05.1999 at about 10.15 p.m., when the petitioner, as a pillion rider, along with one Gati Ashok was chitchatting with one D.Sayaboi, by parking the scooter bearing registration No. AP 25 E 7751 by the side of the road at Borlam Shivar limits, a bus bearing registration No. AP 9Z 2880, belonging to the Corporation, driven at high speed in a rash and negligent manner, came and dashed him, due to which, all of them sustained injuries.

5. The petitioner claims that he was initially shifted to Government Hospital, Banswada, and from there, he was referred to Orthopaedic Surgeon at Nizamabad. He was admitted in the Government Headquarters Hospital, Nizamabad on 13.05.1999 and discharged on 09.06.1999 with loss of his right leg below knee level on account of amputation. He claims that he being an agriculturist, looking after cultivation personally, and also an agricultural labourer earning Rs.10,000/- per month, sought Rs.3,00,000/- towards loss of future earning capacity.

6. Respondent No.2 filed written statement adopted by respondent No.1. Both of them representing the Corporation in different capacities, opposing the claim, sought to dismiss the claim petition.

7. The Tribunal framed three issues basing on the pleadings put forth by both parties.

8. During enquiry, the petitioner examined himself as P.W.1, besides examining the said Gati Ashok as P.W.2 and Dr. L. Ramulu as P.W.3, who issued the disability certificate, marked as Ex.A29, assessing the disability at 80%, and marked Exs.A1 to A29. On behalf of the respondents, one K.Gangadhar, the driver of the Corporation, was examined as R.W.1, though, it is not indicated in the appendix of evidence annexed to the order under challenge.

9. The Tribunal, having accepted the amputation, but, however, discarding the evidence of P.W.3 and rejecting the disability certificate issued by him doubting his credibility, as he was in the habit of issuing such certificates, in respect of which there were comments made by the local Courts and this Court, and looking at the amputation of right leg below knee level from Exs.A3 and A4 issued by the Government Hospital, Banswada and N.I.M.S, Hyderabad, the earnings of the petitioner were taken at Rs.3,000/- per month and, by deducting 1/3rd towards his personal expenses, the remaining amount of Rs.2,000/- per month was taken for determination of compensation. The Tribunal applied multiplier factor '16', as the petitioner was aged 34 years, and arrived at Rs.3,84,000/- (Rs.24,000/- p.a x 16) and, by considering the disability around 50%, arrived at Rs.1,67,000/-,

instead of Rs.1,92,000/-. Thereafter, the Tribunal, basing on the admission made by P.W.2 that they were engaged in conversing with each other on the middle of the road when the accident took place, opined that the petitioner contributed to the accident and, thus, deducted further 50% and arrived at Rs.83,500/-, instead of Rs.96,000/-, towards loss of earning capacity. The Tribunal also granted Rs.3,000/- towards three simple injuries and Rs.3,000/- towards pain and suffering, making a total of Rs.89,500/- (Rs.83,500 + 3,000 + 3,000).

10. Heard Sri Ch.Janardhan Reddy, learned counsel for the appellant-petitioner, and Sri N.Vasudeva Reddy, learned Standing counsel for the respondents.

11. Learned counsel for the appellant would submit that the approach of the Tribunal was wholly incorrect and, in order to attempt to substantiate the said submission, he has drawn the attention of this Court to the observations made by the Tribunal in paragraphs '7' and '8' of the order, whereas learned Standing Counsel for the respondents would support the order under challenge.

12. Firstly, the Tribunal was not right in deducting 1/3rd towards personal expenses, as it is not a case where death claim is involved. Therefore, the earnings at Rs.3,000/- per month or Rs.36,000/- per annum when multiplied with the multiplier factor

'16', works out to Rs.5,76,000/-. Since 50% disability was accepted by the Tribunal, the same would work out to Rs.2,88,000/-. The Tribunal was not right in taking the contributory negligence just basing on the evidence of P.W.2, more particularly, when the FIR marked as Ex.A1 would clearly show that the scooter was parked by the side of the road, but not in the middle of the road at the relevant time, besides the driver of the Corporation, who was examined as R.W.1, completely denying the taking place of the accident itself, stating that he took the bus to Gouraram Village, but, due to naxals activity, he was forced to come back and, according to him, no accident at all had taken place. Therefore, the Tribunal was not right in inferring contributory negligence and deducting 50% again. Thus, the petitioner is entitled to Rs.2,88,000/- towards loss of future earning capacity. The other amounts of Rs.3,000/- granted by the Tribunal towards simple injuries and Rs.3,000/- towards pain and suffering, are maintained.

13. Thus, the petitioner is entitled to a total compensation of Rs.2,94,000/- (Rupees Two lakh ninety four thousand only), as against Rs.89,500/- granted by the Tribunal, and the same is, accordingly, granted.

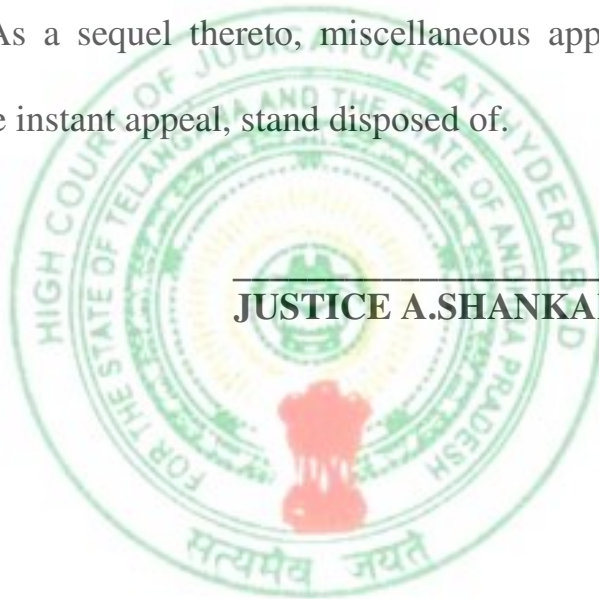
14. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the

amount of Rs.89,500/- granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realisation in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**¹.

15. 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.

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

08.09.2016
v v



JUSTICE A.SHANKAR NARAYANA

¹ 2013 ACJ 1403