

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2128 OF 2009

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, is preferred by the petitioner seeking enhancement of compensation on the ground that the amount of Rs.3,00,000/- granted by the learned Chairman, Motor Accidents Claim Tribunal - cum - District Judge, Anantapur through the order and the decree dated 28.02.2009 in M.V.O.P. No.148 of 2007 as against her claim of Rs.8,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, was on lower side.

2. Heard Sri K. Rathanga Pani Reddy, learned counsel for the petitioner (appellant), and Sri N. Mohana Krishna, learned counsel for the National Insurance Company Limited - respondent No.2.

3. Despite service of notice, respondent No.1, owner of the auto-rickshaw bearing No.AP-02-V-3127, has not entered appearance.

4. So far as the fact-situation is concerned that led to the injury to right upper arm of the petitioner and becoming dysfunctional, claiming that she was earning Rs.8,000/- per month as Secondary Grade Teacher in M.P. Elementary School, Patnak, Kadiri Mandal, and on the ground that her right hand was virtually became useless and instead of going for amputation with the fond hope that she may get movement progressively, she retained her right hand and on

account of it being dysfunctional, it even had impact on her profession as Secondary Grade Teacher and she requires an attendant for doing her household work and, thus, sought Rs.8,00,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988. She has stated that she took treatment in K.R. Hospital, Banglore and also C.M.C. Hospital, Vellore, and underwent several surgical interventions as not only the right upper arm was crushed, but even she sustained fracture of ribs.

5. Respondent No.1, owner of the Eicher lorry bearing No.AP-25-V-250 that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, Insurance Company, opposed the claim by filing a detailed counter. But, it appears, no violations have been complained.

7. The Tribunal has framed three (3) issues about the responsibility for the accident and to determine the compensation.

8. In that direction, the Tribunal examined PWs.1 to 3 and marked Exs.A-1 to A-22 and also Ex.X-1 on behalf of the petitioner; however, no oral or documentary evidence was adduced on behalf of the Insurance Company.

9. The injuries sustained by the petitioner would find place in the summary issued by the K.R. Hospital and spoken to by PW.2 as follows:

- “1. Comminuted fracture Shaft Right Humerus
(Sic. Humerus) with radial Nerve Palsy.
2. Comminuted fracture Both Bones right fore arm.
3. Undisplaced fracture lateral condyle Right
Humerus.
4. Brachial Artery injury in the arm.
5. Multiple Rib fractures right side Haemothorax.
6. Mild Volkmann's Ischervic Contracture right side.
7. Median Nerve injury.”

10. The disability is even spoken to by PW.3 as 45%. PW.2, who treated the petitioner in K.R. Hospital, Bangalore, has asserted that the petitioner sustained 45% disability and even the said hospital issued Ex.X-1 certifying that she sustained permanent disability to the extent of 45%. Besides the same, even the Medical Board, Anantapur, has issued Ex.A-5, the disability certificate, arriving at the same percentage of disability. The Tribunal has not found difficulty in accepting 45% disability, but, some how, instead of resorting to structural formula, despite the petitioner filing salary certificate under Ex.A-4 issued by the Mandal Educational Officer, Kadiri, still, a lump sum amount of Rs.2,00,000/- was awarded

towards partial permanent disability. That has been complained by the learned counsel for the petitioner (appellant).

11. Ex.A-4 is the salary certificate issued by the Mandal Educational officer, Kadiri as the petitioner was working in an Elementary School located in Patnam, Kadiri Mandal. The same cannot be doubted or disputed. It shows that she was drawing a total gross salary of Rs.9,258/- and deductions at Rs.810/- and the net salary as Rs.8,448/-. Even if the disability of 45%, which is not challenged by the Insurance Company by filing any appeal, is taken and the age of the petitioner as 30 years at the relevant time and her income, either gross or net salary, the amount mentioned above is taken into consideration, certainly, the amount of Rs.8,00,000/- claimed by the petitioner cannot be denied. In fact, the Tribunal has granted Rs.1,00,000/- towards medical expenses. It is on record that, PW.1, of course, admitted that the amount of Rs.1,87,000/- spent by her towards hospital expenses for undergoing treatment in K.R. Hospital, Bangalore, a sum of Rs.1,57,000/- was reimbursed. However, so far as the expenses spent at C.M.C. Hospital, Vellore by the petitioner are concerned, it appears, no amount is granted by the Tribunal.

12. Be that as it may, when the right upper arm of the petitioner has become totally dysfunctional and even the medical officer suggested for amputation up to shoulder level, the profession of the petitioner being teacher and she being a woman even required to

attend to domestic services and without employing an attendant for the rest of her life, it would be difficult for her to carry out certain activities; therefore, certainly, the amount of Rs.8,00,000/- claimed by the petitioner cannot be construed as excessive or exorbitant as even if monthly earnings at Rs.8,000/- is taken, 45% thereof is worked out and capitalized with multiplier factor '17', and the amounts towards other heads as the salary towards leave period, it certainly exceeds the claim.

13. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the order and the decree under challenge by enhancing the compensation from Rs.3,00,000/- to Rs.8,00,000/- (Rupees eight lakhs only) with interest at 6% per annum granted by the Tribunal on Rs.3,00,000/- and at 7.5% per annum on the enhanced amount of Rs.5,00,000/- from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in and **Rajesh v. Rajbir Singh¹**. In fact, the petitioner is also entitled to the leave salary since, but for the accident, she would not have availed the leave standing to her credit. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

December 30, 2016.
PV

¹ 2013ACJ1403 = 2013(4)ALT35