

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2549 OF 2009

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by the petitioner in O.P. No.1758 of 2005, on the file of the Motor Accident Claims Tribunal - cum - I Additional District Judge, Mahabubnagar (for short 'the Tribunal'), seeking enhancement of compensation on the ground that the amount of Rs.67,000/- awarded as compensation for the injuries sustained by her in a road accident was not fair and inadequate.

2. The Tribunal by its order, dated 01-08-2008, in the aforesaid O.P. awarded the aforesaid amount with interest at 7.5% per annum as against the claim of Rs.1,50,000/- laid under Section 166 of the Act.

3. There is no dispute in regard to the fact-situation occurring in the instant case, and even the findings recorded by the Tribunal except to the extent of 1/3rd ought not to have been deducted while determining the compensation and by applying structured formula for the reasons that it is not a case of death, but it is only an injury case.

4. Heard Sri A. Prabhakar Rao, learned counsel for the appellant - petitioner, and Sri A. Ramakrishna Reddy, learned standing counsel for respondent No.2 - Insurer. Since it was endorsed in the cause title of memorandum of grounds of appeal that respondent No.1 is not a necessary party, no process was resorted to.

Further, he remained *ex parte* before the Tribunal and suffered a decree.

5. Perused the order and the evidence on record, both, oral and documentary.

6. Perusal of record shows PWs.2 to 4 are the Medical Officers. It appears that the petitioner suffered inconvenience on account of non-alignment of fractured bone of right wrist; the Tribunal awarded Rs.1,000/-; Rs.15,000/- and Rs.5,000/- for three injuries mentioned in paragraph No.9 of the order, respectively, which includes pain and suffering, making a total of Rs.21,000/-. Besides the same, the Tribunal has also granted Rs.2000/- towards attendant charges, as the petitioner had undergone treatment as inpatient for (19) days. Rs.1,000/- towards transport charges; Rs.3,000/- towards extra nourishment and towards medical expenses incurred by her under Ex.A-10 and A-12 a sum of Rs.22,000/- was awarded rounding off the amounts mentioned therein amounting to Rs.21,730/-. The Tribunal taking into account the disability spoken to by PW.4, though not 35% disability, but still, considering it as 20% as the petitioner had to undergo the sufferance with post traumatic stiffness of right wrist, elbow and applying multiplier factor '9' as the petitioner was aged 60 years old, taking the notional income of Rs.15,000/- per annum, by deducting 1/3rd thereof, arrived at Rs.18,000/- towards loss

of future earning capacity and, thus, in all, the Tribunal granted a sum of Rs.67,000/- as compensation as against the claim of Rs.1,50,000/-.

7. So what requires to be considered is, whether the Tribunal was right in deducting 1/3rd of the earnings of the petitioner. Certainly has to be answered in the negative. Therefore, taking Rs.15,000/- per annum as the income, when 20% disability is reckoned which works out to Rs.3,000/- and when the same is capitalized with the multiplier factor '9', it works out to Rs.27,000/- towards 20% loss of earning capacity. This apart, the amount of Rs.3,000/- granted by the Tribunal towards extra nourishment appears to be on lower side and, therefore, it is enhanced to Rs.5,000/-, and so also the attendant charges is enhanced to Rs.4,000/-. The Tribunal has not granted any amount towards temporary loss of earnings. Therefore, at the rate of Rs.1200/- per month for three months, a sum of Rs.3,600/- is granted. The amounts granted under other heads are maintained. Thus, in all, the petitioner is entitled to Rs.83,600/- as against Rs.67,000/- granted by the Tribunal.

8. Even, the rate of interest awarded by the Tribunal at 7.5% per annum is in tune with the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹ and, therefore, the same is maintained.

¹. 2013 ACJ 1403

9. In the result, the appeal is allowed in part, and the order and decree, dated 01-08-2007, in O.P. No.1758 of 2005, passed by the Tribunal are modified enhancing the compensation to Rs.83,600/- (Rupees eighty three thousand and six hundred) from Rs.67,000/- with interest at 7.5% per annum thereon from the date of petition till realization. No order as to costs.

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

A. SHANKAR NARAYANA, J

November 16, 2016.

Mgr

