

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2726 OF 2009

JUDGMENT:

On the ground that the compensation of Rs.2,49,687/- awarded by the Chairman, Motor Accident Claims Tribunal - cum - District Judge, East Godavari District at Rajahmundry (for short 'the Tribunal') by the order and decree, dated 07-04-2009, in M.V.O.P. No.320 of 2007 for the amputation of left leg below knee level was very meager, the petitioner preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') requesting to grant the balance amount out of Rs.6,00,000/-.

2. Heard Sri N. Siva Reddy, learned counsel for the appellant and Sri B. Devanand, learned counsel for respondent No.3 - Insurer. Respondent No.2, owner of the van, though, service was effected, not entered appearance. In the cause title itself, it is mentioned that respondent No.1, driver of the van, is not a necessary party.

3. The fact-situation occurring in the present case leading to the injuries sustained by the petitioner in a road accident and ultimately being subjected to the amputation of his left leg up to knee level is not in dispute and, therefore, there is no need to advert to the details thereof.

4. The Tribunal answering the issue Nos.1 to 3 in the light of evidence of PWs.1 and 2, amongst whom, PW.2 is the Medical

Officer and Exs.A-1 to A-6 and Ex.X-1 marked on behalf of the petitioner and Ex.B-1 on behalf of respondent No.3 - Insurer, held these issues in favour of the petitioner. On issue No.2, the Tribunal, on appreciation of evidence on record, more particularly, the evidence of Medical Officer examined as PW.2, granted Rs.25,000/- towards pain and suffering; Rs.10,000/- towards extra nourishment and transportation charges; Rs.1,92,000/- towards loss of future earning capacity taking into consideration the age as 40 years, income of Rs.24,000/- per annum and disability at 50%; Rs.12,000/- towards loss of temporary earnings and Rs.10,687/- towards medical expenses based on Ex.A-6, making a total of Rs.2,49,687/- and awarded interest at 7.5% per annum.

5. Seeking enhancement of compensation, the petitioner preferred the present appeal stating that the Tribunal was not right in fixing monthly income at Rs.2,000/- as against Rs.6,000/- claimed by him being vegetable vendor and even Rs.25,000/- granted by the Tribunal towards pain and suffering being on lower side and, therefore, sought to grant balance amount.

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

7. The disability at 50% assessed by PW.2, the doctor, and considered by the Tribunal has to be maintained, as there is

amputation of left lower limb up to the knee level which is visible from the photograph filed by the petitioner, besides medical evidence proving through Ex.A-4, issued by the Medical Board, Government Headquarters Hospital, Kakinada. The amounts of Rs.25,000/- granted by the Tribunal towards pain and suffering and Rs.10,000/- towards extra nourishment and transport charges do not require any enhancement and, therefore, they are maintained. However, so far as the annual income of Rs.24,000/- is concerned, in view of the settled proposition that even a labourer would be earning around Rs.30,000/- to Rs.36,000/-, average income of the petitioner is taken as Rs.30,000/- per annum and even according to his own evidence, he was a seasonal vegetable vendor, 50% thereof, towards partial permanent disability, would work out to Rs.15,000/-. Since the petitioner was aged 40 years, the relevant multiplier factor is '15' as per the table formulated by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**¹, and when multiplier factor '15' is applied and capitalized, loss of future earning capacity would work out to Rs.2,25,000/- [Rs.15,000/- x 15]. The Tribunal has also granted Rs.12,000/- towards loss of temporary earnings for one year @ Rs.1,000/- per month towards 50%, which appears to be not correct and, therefore, as against the said amount, a sum of Rs.25,000/- is granted. The other amount of Rs.10,687/- granted by the Tribunal is maintained rounding off to

¹. (2009) 6 Supreme Court Cases 121

Rs.11,000/-. Thus, in all, the petitioner is entitled to Rs.2,96,000/- as compensation.

8. Even, the rate of interest awarded by the Tribunal at 7.5% per annum is maintained as the same is in tune with the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**².

9. In the result, the appeal is allowed in part, and the order and decree, dated 07-04-2009, in M.V.O.P. No.320 of 2007, passed by the Tribunal are modified enhancing the compensation to Rs.2,96,000/- (Rupees two lakhs and ninety six thousand) from Rs.2,49,687/- 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

December 30, 2016.

Mgr

². 2013 ACJ 1403