

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1255 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.52,700/- granted as compensation by the order dated 15.03.2005 in O.P. No.247 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda (for short, 'the Tribunal') as against the claim of Rs.75,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of tractor and trailer bearing registration Nos.AP 24B 6260 and AP 24B 6261, respectively, are respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 09.04.2003, the petitioner along with others were waiting at Gunjalur bus stage to go to Suryapet, at about 9-00 a.m., a tractor and trailer bearing registration Nos.AP 24B 6260 and AP 24B

6261 driven at high speed and in a rash and negligent manner came from Madhavaram proceeding towards Thirmalgiri, dashed them, due to which he received grievous injuries and he was shifted to Government Hospital, Suryapet, from there, he was shifted to Dr. Krishna Reddy's Hospital for better treatment. Concerned police also registered a case in Crime No.46 of 2003 against the driver of tractor and trailer for the offences punishable under Sections 337 and 338 IPC. Claiming that he was an agriculturist and labourer earning Rs.3,000/- per month, sought a total sum of Rs.75,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the tractor and trailer.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the accident occurred due to rash and negligent act of the driver of tractor and trailer and in the said accident the petitioner sustained injuries?

2. Whether the petitioner is entitled to any compensation, if so, from whom and what is the quantum of amount?

3. To what relief ?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining the doctor as P.W.2 and marked Exs.A.1 to A.5 to substantiate his claim; whereas, on behalf of respondent No.2, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

8. The Tribunal, on appraisal of evidence let in the petitioners, held issue No.1 in favour of the petitioner; and on issue No.2, basing on the description of injuries finding place in Ex.A.3 showing that he sustained one grievous injury to right hand, awarded a sum of Rs.5,000/- towards pain and suffering and, though, P.W.2 has assessed 55% disability to right hand of the petitioner, the Tribunal has refused to take the disability at that percentage and, however, taken disability only at 20% and taking the age of the petitioner as 40 years and the notional income at Rs.1,500/- per month, applied multiplier '13' and arrived the loss of earning capacity at Rs.43,200/- and also granted a sum of Rs.4,500/- towards temporary loss of earnings, as the petitioner was bedridden during the relevant period. Thus, a total sum of Rs.52,700/- as compensation with interest at 9% per annum from the date of petition till date of realization.

9. It is the aforesaid order which is under

challenge in the instant appeal contending in the grounds that the Tribunal ought to have taken multiplier '15' instead of '13' and, therefore, sought to grant the balance amount.

10. No representation for the appellant. Heard Sri N. Mohan Krishna, learned Standing Counsel for respondent No.2-Insurance Company.

11. Perused the order and the evidence on record, both, oral and documentary let in by the petitioner. Since there is no appeal preferred by respondent No.2-Insurance Company challenging the percentage of disability taken by the Tribunal for determination of compensation, the percentage at 20% appears to have taken by the Tribunal is considering the fact that the injury to right hand was only a simple fracture. So far as the notional income at Rs.1,500/- per month or Rs.18,000/- per annum fixed by the Tribunal is concerned, the same also does not warrant any interference. However, the multiplier applied by the Tribunal is incorrect. Since the petitioner was aged 40 years, relevant multiplier would be '15' as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation and another**^[1]. When the multiplier '15' is applied, loss of earning capacity works out to Rs.54,000/- (Rs.18,000/- x 15 x 20%). The Tribunal has granted Rs.5,000/- towards pain and suffering and the same is enhanced to Rs.10,000/-. No amount is granted by the Tribunal

towards extra nourishment. Keeping in view, the injuries sustained by the petitioner, a sum of Rs.3,000/- is granted towards extra nourishment. The amount of Rs.4,500/- awarded by the Tribunal under the head 'temporary loss of earnings' is confirmed.

12. Thus, the petitioner is entitled to a total sum of Rs.71,500/- (Rupees seventy one thousand and five hundred) as against Rs.52,700/- granted by the Tribunal, towards compensation and the same is accordingly granted. 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 granted by the Tribunal and it is granted at 7.5% per annum on the enhanced amount from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh's Rajesh and others v. Rajbir Singh and others**^[2].

13. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation with interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

3rd February, 2016

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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2013 ACJ 1403