

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2408 OF 2009

JUDGMENT:

The present appeal is preferred by the petitioner in M.V.O.P. No.1102 of 2001, on the file of the Chairman, Motor Accident Claims Tribunal - cum - VII Additional District Judge (Fast Track Court), Guntur (for short 'the Tribunal') under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking enhancement of compensation by modifying the order dated 18-10-2005.

2. By the aforesaid order, the Tribunal for the amputation of right forearm, granted a compensation of Rs.80,000/- as against the claim of Rs.2,75,000/- laid under Section 166 of the Act.

3. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer of an Auto-rickshaw bearing registration No.AP 7X 2574, respectively, are respondents as such in the aforesaid M.V.O.P.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid MVOP.

5. The facts would show that on 19-08-2001 at about 10.30 p.m., the petitioner was returning in auto-rickshaw bearing registration No. AP 7X 2574 from Kaza village to Guntur along with other passengers, and when it reached near Agrimcar Tobacco

Company, since its driver drove it in a rash and negligent manner, it hit the lorry, due to which, she received injuries. She was immediately shifted to Government General Hospital, Guntur. Claiming that she had undergone amputation of right forearm and became physically disabled, spent Rs.20,000/- towards medical expenses, sought a sum of Rs.2,75,000/- as compensation.

6. Respondent No.1, owner of the auto-rickshaw, remained *ex parte* before the Tribunal.

7. Respondent No.2, its insurer, opposed the claim by filing written statement.

8. The Tribunal having framed three issues, examined PWs.1 and 2, who are petitioner and the doctor, who treated her, and marked Exs.A-1 to A-4, besides marking the case sheet as Ex.X-1. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

9. The Tribunal having found both the issues in favour of the petitioner, treating the partial permanent disability at 30% as against 50% shown in Ex.A-4 - disability certificate issued by the Medical Board on account of the amputation; taken annual income at Rs.12,000; age as 40 years; applied multiplier '15' borrowing the same from the Second Schedule to Section 163-A of the Act, and arrived at Rs.1,80,000/-, and towards 30% disability arrived at

Rs.60,000/- and granted the same, besides granting Rs.10,000/- towards medical expenses and Rs.10,000/- towards damages for pain and suffering and loss of amenities in her life and, thus, the Tribunal granted Rs.80,000/- as compensation. The Tribunal has granted interest at 7.5% per annum.

10. Heard Sri B. Parameswara Rao, learned counsel for the appellant - petitioner. Though, service was completed on respondent No.2, none appears. The appellant endorsed in the grounds of appeal that respondent No.1 is not a necessary party. In fact, respondent No.1 suffered the decree having remained *ex parte* before the Tribunal.

11. Now, the short point that arises for consideration is:

Whether the compensation granted by the Tribunal is just and adequate?

12. It is clear from the evidence of PW.2 as well as Ex.A-4, disability certificate, the petitioner lost her right forearm as the amputation was done below elbow level. Her age being 40 years on the date of accident is not in dispute. But, however, so far as the income is concerned, the learned counsel for the petitioner would submit that the Tribunal without assigning any reason has arrived at Rs.12,000/- per annum as the income of the petitioner. The accident has taken place in the year 2001. Even by going through the Second

Schedule, Rs.15,000/- per annum, in the absence of any documentary evidence forthcoming or tangible evidence, has to be taken as the income of the petitioner, she being a bread earner, and disability at 30% as taken by the Tribunal, the petitioner would be entitled to Rs.67,500/- [Rs.15,000/- x 30% x 15]. The amount of Rs.10,000/- granted by the Tribunal towards pain and suffering is on lower side keeping in view the injuries sustained by her and, therefore, a sum of Rs.25,000/- is granted towards pain and suffering. The Tribunal has not granted any amounts under the heads of extra nourishment, attendant and transport charges and, therefore, Rs.10,000/- towards extra nourishment; Rs.5,000/- towards attendant charges; Rs.3,000/- towards transport charges are granted. An amount of Rs.10,000/- granted by the Tribunal towards medical expenses is maintained. Even, the Tribunal has not granted any amount towards loss of temporary earnings and, therefore, keeping in view the injuries which the petitioner sustained, a sum of Rs.9,000/- is granted under the said head. Thus, in all, the petitioner is entitled to Rs.1,29,500/- as compensation as against the amount of Rs.80,000/- granted by the Tribunal.

13. 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 others¹ and, therefore, the same is maintained.

14. In the result, the appeal is allowed in part, and the order and decree, dated 18-10-2005, in M.V.O.P. No.1102 of 2001, passed by the Tribunal are modified enhancing the compensation to Rs.1,29,500/- (Rupees one lakh twenty nine thousand and five hundred) from Rs.80,000/- 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.

December 26, 2016.
Mgr

A. SHANKAR NARAYANA, J

¹. 2013 ACJ 1403