

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1471 of 2005

Judgment:

Having got dissatisfied with the award of Rs.45,000/- as compensation, by the order, dated 19.04.1999, in MVOP No. 816 of 1997 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Kadapa, as against the claim of Rs.1,25,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') the claimant preferred the instant appeal seeking enhancement.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that, on 01.05.1995, at about 7.00 AM, the petitioner, her son Kareemulla and others boarded a Jeep bearing registration No.AP-04-9288 at Kadapa, owned by the third respondent and insured with the fourth respondent, to go to Mantralayam via Kurnool and when the Jeep reached Malakurthy, it went to left side of the road, during which time a lorry, owned by the first respondent and insured with the second respondent, driven in a rash and negligent manner, dashed the Jeep, due to which, the petitioner sustained injuries and three others died instantly. Therefore, she laid claim for Rs.1,25,000/- on the ground that she sustained multiple injuries amongst which one injury affected her one of the lower limbs.

4. Before the Tribunal, respondents 1, 2 and 3 remained *ex parte*. The fourth respondent – insurer alone contested the claim opposing the claim.

5. The Tribunal, based on the pleadings placed before it, framed three issues in order to fix the responsibility for the accident.

6. During enquiry, the petitioner examined herself as PW.1 besides examining Dr. B. Someswara Reddy as PW.2 and marked Exs.A1 to A4. On behalf of the fourth respondent – Insurance Company no witnesses were examined and no documents were filed.

7. On issue No.1, the Tribunal, on appraisal of evidence on record, assessed the liability to the extent of 70% on the part of the driver of the lorry and 30% negligence on the part of the driver of the Jeep and, accordingly, tendered a finding. On issue No.2, the Tribunal, noting the injuries sustained by the petitioner as shown in Ex.A1 – wound certificate and also considering the disability certificate as in Ex.A2, as the same was supported by the evidence of PW.2, who issued the same, granted Rs.20,000/- towards pain and suffering, Rs.5,000/- towards medical and other incidental expenses including the attendant charges, Rs.10,000/- towards loss of earnings and another sum of Rs.10,000/- towards 20% disability and discomfort suffered by the petitioner, making a total of Rs.45,000/- fastening liability to the extent of Rs.31,500/- on the respondents 1 and 2 with proportionate costs and interest and Rs.13,500/- on respondents 3 and 4. The rate of interest awarded by the Tribunal at 12% p.a., is shown in the decree but not mentioned in the order.

8. It is the aforesaid order which is under challenge in the instant appeal on the ground that the Tribunal has not properly appreciated the evidence on record. The Tribunal has not assigned any reasons in discarding the factum of petitioner not attending to her regular employment on account of injury.

9. Heard Sri TVS Kumar, learned counsel for the appellant, and Sri Kota Subba Rao, learned counsel for the second respondent – Insurance Company. No representation for the fourth respondent. None appears for the first respondent. The appeal was dismissed against the third respondent on 03.01.2012 for default. He being the

owner of the Jeep, his absence would not make any difference in deciding the request in the instant appeal.

10. During the course of arguments, learned counsel for the appellant would submit that the petitioner sustained deformity as there was shortening of $\frac{1}{2}$ " of her left leg and that accounted for 20% disability. Though, the learned counsel for the appellant submitted that the petitioner was working as attender in APSRTC, but strangely no salary certificate or pay slip is filed to enable the Tribunal to apply the formula in determining the loss of earning capacity or in terms of physical discomfort. That has been the reason the Tribunal has granted Rs.10,000/- towards physical discomfort with reference to 20% disability of the lower limb. However, when examined in the light of the evidence on record, more particularly, the evidence of PW.2, the amount of Rs.20,000/- granted by the Tribunal was towards pain and suffering, but does not include the injury as such, therefore, the same is enhanced to Rs.40,000/-, keeping in view, that there has been deformity in view of fracture of both bones of left leg. The amount of Rs.5,000/- granted by the Tribunal towards medical expenses is maintained as no medical bills are forthcoming. The amount of Rs.10,000/- granted by the Tribunal towards loss of earnings, when kept in view, the sufferance undergone by the petitioner and the nature of injury as such, she would have been attending the duties only after six months, so at the rate of Rs.3000/- per month as claimed, the same is enhanced to Rs.18,000/- as against Rs.10,000/-. Towards 20% of physical discomfort, Rs.20,000/- granted by the Tribunal is enhanced to Rs.35,000/- as she has to suffer with discomfort through out. Thus, the petitioner is granted a total sum of Rs.98,000/- (Rs.40,000/- + Rs.5,000/- + Rs.18,000/- + Rs.35,000/-). The interest at 12% p.a., granted by the Tribunal, is maintained on the amount of Rs.45,000/- granted by it, but the interest on the enhanced amount is granted at 7.5% p.a., as per the decision of the Hon'ble Apex Court in **Rajesh**

and others v. Rajbir Singh and others^[1]. The liability is apportioned in the same manner, in which the Tribunal has apportioned, on the enhanced amount.

11. Accordingly, the MACMA is partly allowed. There shall be no order as to costs.

12. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 20.01.2016

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^[1] 2013 ACJ 1403 = 2013(4) ALT 35