

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.2358 of 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.59,000/- as compensation for the grievous injuries sustained by the petitioner in a road accident, by the order dated 29.06.2005 in M.O.P.No.206 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Visakhapatnam (for short, the Tribunal'), as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), 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 to 3, who are the owner, driver and insurer of the car bearing registration No.AP 31 W 6146 respectively, are respondent Nos.1 to 3, respectively, in the original petition.

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

4. The facts in brief are that on 27.12.2003 at about 5.00 p.m., while the petitioner was returning to her house on foot, a Tata

Indica car bearing No.AP 31 W 6146 hit her, due to which, she sustained fractures to both legs and other injuries. She was immediately shifted to K.G.H. Visakhapatnam, where she got treated and finally her left foot was amputated. For other injuries sustained by her, steel plates were inserted and, even to her left hand, surgery was done. She claims that she spent Rs.40,000/- towards treatment and medicines. Thus, laid claim petition for granting Rs.2,00,000/-.

5. Respondent Nos.1 and 2, who are the owner and the driver of the accident vehicle, remained *ex parte*. Respondent No.3- National Insurance Company Limited opposed the claim by filing counter raising various pleas.

6. Based on the said pleadings, the Tribunal framed the following three issues:

1. Whether the accident dt.27.12.2003 in which the petitioner sustained injuries due to the rash and negligent driving of the car bearing No.AP 31 W 6146 by its driver?
2. Whether the petitioner is entitled for compensation, if so to what amount and from which of the respondents?
3. To what relief? ”

7. During enquiry, the petitioner examined herself as P.W.1 and marked Exs.A1 to A7. On behalf of respondent No.3-insurer, no witnesses were examined and no documents were marked.

8. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioner recording a finding that due to rash and negligent driving of the car driver, the accident had occurred, resulting in injuries to her. On issue No.2, having deliberated on the nature of the injuries sustained by the petitioner and the surgical interventions undergone by her and also looking at the contents of Exs.A3 and A4, while discarding Ex.A5, in which the disability is shown as 60% by the Medical Board, granted a sum of Rs.20,000/- towards disability i.e., amputation of foot, Rs.30,000/- towards fracture injuries, numbering three, @ Rs.10,000/- for each fracture injury, Rs.3,000/- for three simple injuries and Rs.3,000/- towards medicines and treatment, as against Rs.40,000/- claimed by her, besides granting Rs.3,000/- towards loss of temporary earnings, as she was working as Supervisor, treating her salary as Rs.1,500/- per month as against Rs.3,000/- per month claimed by her on employment in F.C.I. Park situated locally. Thus, the Tribunal has granted a total sum of Rs.59,000/- with interest at 7.5% per annum.

9. Feeling that the amount granted by the Tribunal was very meagre, the petitioner preferred the instant appeal contending in the

grounds of appeal that the Tribunal, somehow, overlooked the fact that she suffered amputation of left foot and the disability at 60% assessed by the Medical Board under Ex.A5 and even the amount of Rs.40,000/- spent by her for medicines and treatment was ignored, and thereby, she sought the balance amount to be granted.

10. Heard Sri G.Rama Gopal, learned counsel for the appellant, and Sri R.K.Suri, learned Standing Counsel for respondent No.3-Insurance Company. Concerning Respondent Nos.1 and 2, the present appeal was dismissed by orders dated 05.01.2012 for not pursuing the service of notices as ordered by this Court. However, the absence of Respondent Nos.1 and 2 would not make any difference in view of the fact that they suffered decree and also in view of the decision of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹.

11. The submission of the learned counsel for the appellant is, that despite the appellant suffering amputation of left foot and the disability at 60% assessed by the Medical Board, the Tribunal did not appreciate the same on the mere ground that the doctor was not examined to prove the percentage of disability in Ex.A5, though, the amputation is visible and, therefore, sought to enhance the compensation by granting the balance amount.

¹ 2001(1) ALT 495 (D.B.)

12. The learned Standing Counsel for the Insurance Company would resist the request in the appeal, submitting that what was determined by the Tribunal is fair and adequate compensation under the circumstances and that the Medical Officer was not examined by the petitioner and, therefore, the Tribunal has rightly recorded the finding by assessing the disability and awarded Rs.20,000/- towards disability.

13. From a perusal of the order and the evidence on record, it is true, that to prove Ex.A5, one of the Medical Officers, who subscribed signature, ought to have been examined to arrive at, as to how, the disability assessed was reached. In the absence of the same, it is difficult to consider 60% disability mentioned in the disability certificate. But, however, the loss of left foot must have been visible to the Tribunal and, in fact, the Tribunal has agreed that the petitioner suffered amputation of left foot. In that view of the matter, when examined, the amount of Rs.20,000/- granted by the Tribunal towards disability is certainly, on lower side. Since the petitioner has to suffer throughout her life with the said disability and the disability being, to one of the lower limbs, the amount of Rs.20,000/- granted towards disability is enhanced to Rs.75,000/-. Towards fracture injuries, the Tribunal separately awarded Rs.10,000/- towards each fracture injury and, when kept in view, the nature of the injuries the petitioner

sustained and the suffering she had undergone, certainly she is entitled to Rs.20,000/- towards each fracture injury and, thus, the amount of Rs.30,000/- granted for fracture injuries is enhanced to Rs.60,000/-. The amount of Rs.3,000/- granted by the Tribunal towards medicines and treatment is maintained, in view of the fact that there is no documentary evidence forthcoming to substantiate that the petitioner spent Rs.40,000/- towards medicines and treatment. The amount of Rs.3,000/- granted by the Tribunal towards pain and suffering is enhanced to Rs.9,000/- keeping in view, that at least for six months the petitioner would have suffered inconvenience temporarily.

14. So far as temporary loss of earnings of the petitioner is concerned, the amount of Rs.3,000/- granted for two months @ Rs.1,500/- per month, is maintained in view of the fact that there is no evidence to substantiate that she was earning Rs.3,000/- per month by working as Supervisor in F.C.I. park.

15. Thus, the petitioner is entitled to a total sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only), as against Rs.59,000/- granted by the Tribunal, towards compensation and the same is, accordingly, granted. Interest at 7.5% per annum granted by the Tribunal is maintained on the entire amount awarded from the date of petition till realisation.

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

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

JUSTICE A.SHANKAR NARAYANA

15th July, 2016

v v

