

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.1425 OF 2005

JUDGMENT:

On the ground that the compensation of Rs.1,03,000/- is very meagre, the instant appeal is preferred under Section 173 of the Motor Vehicles Act 1988 (for short 'the Act') challenging the order and decree, dated 22.08.2003, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District Judge, Guntur, in O.P. No.853 of 1999, seeking enhancement.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of the lorry bearing No.AP-11-T-3663, are respondent Nos.1 and 2 respectively.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. Now petitioner seeks enhancement of compensation requesting to grant the balance amount in view of the fact that he became stale not only because of age but also because of loss of functioning of right arm in its entirety.

5. The facts that led to filing the claim petition are that on 25.11.1997 at 8.30 p.m., while the petitioner was proceeding on the Scooter bearing No.AP-7A-1152 towards Miryalaguda, a lorry bearing No.AP-11-T-3663, driven in a rash and negligent manner came in the opposite direction and hit his scooter, due to which he fell down and sustained injuries to his right arm. He was shifted to

Dr. Ashok Kumar's Hospital where, he had taken first-aid, and then shifted to Government Hospital, Miryalaguda, and after treatment there, he was shifted to Kamineni Hospital, Hyderabad for better treatment having been admitted there, on 26.11.1997, discharged on 06.12.1997. According to him, he came back to Guntur and admitted in St. Joseph's Hospital on 09.12.1997 and again he was taken to

Dr. C. Ram Prasad's Hospital on 01.01.1998, where, he was treated as inpatient for one week and undergone skin grafting for right hand, and, again he took follow up treatment in Kamineni Hospital, Hyderabad, and, therefore, he claims that an amount of Rs.70,000/- was spent by him for medical expenses. According to the petitioner, he was 55 years old and earning Rs.10,000/- per month as driver-cum-owner of the lorry. Due to the accident, his right hand became functionless and since he was pursuing the profession of driver, he sustained 100%

disability, and, therefore, sought Rs.2,00,000/- as compensation under Section 166 of the Act.

6. Respondent No.1, owner of the lorry that involved in the accident, remained *ex parte* before the Tribunal.

7. Respondent No.2, insurer of the lorry, opposed the claim.

8. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

9. During enquiry, petitioner besides examining himself as PW.1, examined two doctors as PWs.2 and 3 and marked Exs.A-1 to A-77 and Exs.X-1 and X-2 on his behalf; and on behalf of the insurer, no oral or documentary evidence was adduced.

10. On over all assessment of the evidence on record, the Tribunal recorded a finding in favour of the petitioner on issue No.1.

11. So far as determination of compensation is concerned, the Tribunal basing on the evidence of PWs.2 and 3, which would prove that the petitioner sustained anterior dislocation of right shoulder and fracture of right rib Nos.1, 2, 3 and 4 and he is suffering from stiffness of right shoulder, right elbow and right fore arm with

discharging sinus over the right elbow and even skin grafting was done to the right hand, granted a sum of Rs.42,781.87 paise towards medical expenses, Rs.40,000/- towards disability, Rs.6,000/- towards simple injuries at Rs.1,500/- per injury for four (4) injuries, Rs.10,000/- towards pain and suffering and Rs.4,000/- towards disability to right shoulder, making a total of Rs.1,03,000/- with interest at 9% per annum.

12. The aforesaid order and decree are under challenge in the instant appeal on the ground that the amount granted was far below to which the petitioner is entitled. Contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence on record and though, he spent Rs.70,000/-, the Tribunal awarded only Rs.45,000/- towards medical expenses and even the other sums granted by the Tribunal are meagre and the Tribunal, somehow overlooked the fact that he sustained 55% disability as spoken to by PW.3 and recorded as in Ex.A-5, sought to grant balance amount.

13. Heard Sri C.V.R. Rudra Prasad, learned counsel for the petitioner (appellant), and Sri G. Pursuhotham Rao, learned counsel for the respondent No.2, insurer.

14. Despite service of notice, none appears for respondent No.1, insured. The absence of respondent

No.1 is of no consequence since he has already suffered a decree passed by the Tribunal.

15. The Tribunal has not taken into consideration the disability certificate Ex.A-5, issued by PW.3. A perusal of Ex.A-5 would show that in fact PW.2, an assistant professor of Orthopaedics, Government General Hospital, Guntur signed in it recording disability whereas the Chairman was from Nalgonda, Head-Quarters Hospital as could be gathered from the seals affixed beneath their signatures. There is no explanation as to how such a certificate as in Ex.A-5 could be obtained by the petitioner. In fact, when a Medical Board examines the injured for the purpose of issuance of disability certificate, the Members of the Board along with Chairman subscribe their signatures having determined the disability by assigning the degrees of restriction or elaborating as to how they arrived at the percentage of disability mentioned therein and such details are not at all finding place in Ex.A-5. Though, in so many terms, the Tribunal did not mention the reasons for discarding Ex.A-5, the fact is, that it has appreciated Ex.A-5 and did not accept it for determination of compensation.

16. Now turning to the amount granted by the Tribunal, medical expenses of Rs.42,787/- do not require any interference.

The evidence of PWs.2 and 3 would show that the

petitioner's right arm is totally disabled and in fact that was the reason why PW.3 - the medical officer has assessed the disability at 55% by elaborating the same in his evidence. It is not as though, there is only disability, but he has also sustained grievous injuries of fracture of right rib Nos.1, 2, 3 and 4. when kept in view, all these injuries and the nature of disability, the amount of Rs.40,000/- granted by the Tribunal is very meagre as the petitioner was pursuing the profession of driver being a driver - cum - owner of a heavy motor vehicle and in fact it has come up in his evidence that he has disposed off his lorry in view of his accident in which he almost lost his right arm. Therefore, the same requires enhancement. The Tribunal even granted Rs.10,000/- towards pain and suffering which also requires enhancement when kept in view, the nature of injuries and the sufferance he has undergone. The amount of Rs.4,000/- granted by the Tribunal towards loss of amenities due to disability is also on lower side. In case, the disability certificate from the competent Board has been produced and filed by the petitioner in place of Ex.A-5 and even taking his age as 50 or 55 years, and roughly a sum of Rs.3,000/- is taken as his monthly income and future loss of earning capacity is assessed in terms of money, it would be nearer to or approximately Rs.2,00,000/- besides special damages.

17. Therefore, the petitioner is entitled to an amount

of Rs.2,00,000/- (Rupees two lakhs only) towards compensation as against Rs.1,03,000/- granted by the Tribunal. The rate of interest at 9% per annum, on the compensation of Rs.1,03,000/- granted by the Tribunal is maintained, however, on the enhanced compensation, it is fixed at 7.5% per annum from the date of petition till realisation, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

18. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

July 8, 2016.

PV

^[1] 2013ACJ1403 = 2013(4)ALT35