

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.2659 OF 2005

JUDGMENT:

Feeling dissatisfied with the award of Rs.1,07,500/- as compensation by the order and decree, dated 10-03-2005, in M.V.O.P. No.821 of 2002, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – IX Additional District Judge, Guntur, as against the claim of Rs.2,50,000/- laid under Sections 163-A, 166 and 140 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rules 455 and 476 of Andhra Pradesh Motor Vehicles Rules, 1989, the instant appeal is preferred by the petitioner seeking enhancement.

2. The appellant herein is the petitioner and respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.AP 16T 3696, respectively, are respondent Nos.1 and 2 as such in M.V.O.P. before the Tribunal.

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

4. The facts, in brief, are that on 11-03-2002 at about 5.00 p.m., while the petitioner was proceeding on foot on the left side of the road near Currency Nagar, Vijayawada, a lorry bearing registration No.AP 16T 3696 driven by its driver at high speed in rash and negligent manner came and hit him and ran over his both ankle joints causing fractures. Immediately, he was shifted to University General Hospital, Vijayawada and police intimation was

given. According to the petitioner, he was fruit vendor, earning Rs.100/- per day and due to accident, he became totally crippled, lost earning capacity and he spent Rs.10,000/- for treatment. Hence, sought to grant a sum of Rs.2,50,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the lorry.

5. Respondent No.1, owner of the lorry, remained *ex parte*.

6. Respondent No.2, its insurer, opposed the claim by raising various pleas.

7. On the basis of pleadings, the Tribunal framed three issues about the responsibility for the accident.

8. During inquiry, the petitioner, besides examining himself as PW.1, has examined Dr. V. Somanadham, as PW.2 and marked Exs.A-1 to A-3, besides getting summoned the case sheet and getting it marked through PW.2 as Ex.X-1. On behalf of respondent No.2, no witnesses were examined, and no documents were filed.

9. The Tribunal answered issue No.1 in favour of the petitioner on appraisal of evidence. On issue No.2, having observed that the petitioner was treated as in-patient from 11-03-2002 to 10-05-2002 as per Ex.X-1 entries and the evidence of PWs.1 and 2 and having found that PW.1 had suffered with deformity of toes and terminal part of great toe and unable to walk as a normal person and needs some assistance while walking and there was flat foot and deformity, granted a sum of Rs.67,500/- towards loss of earning capacity considering 30% disability, as

spoken to by PW.2, taking notional income at Rs.15,000/- per annum and applying multiplier '15' as PW.1 was aged 42 years; and also granted Rs.10,000/- towards medical expenses and another sum of Rs.10,000/- towards pain and suffering and Rs.15,000/- towards loss of amenities of life and, thus, a total sum of Rs.1,07,500/- was granted as compensation with interest at 9% per annum thereon.

10. It is the aforesaid order which is questioned in the instant appeal on the ground that meager compensation was granted contending that the Tribunal has not properly appreciated the evidence of PW.2 and Ex.X-1, and even the amounts awarded by the Tribunal of Rs.10,000/- towards pain and suffering and Rs.15,000/- towards loss of amenities of life are on lower side and even taking notional income at Rs.15,000/- per annum was without any basis ignoring the evidence of PW.1 and, therefore, sought to grant balance amount.

11. Heard Sri A. Rajendra Babu, learned counsel for the appellant – petitioner, and Sri R. Venkat Rao, learned Standing Counsel for respondent No.2 - Insurance Company. The appeal was dismissed against respondent No.1 for default, by order, dated 05-01-2012. However, since respondent No.1 being owner of the accident vehicle suffered decree, the dismissal order is of no consequence in adjudicating upon the request made herein.

12. Perused the order and the evidence on record, both, oral and documentary, more particularly, Ex.X-1 and evidence of PW.2.

13. As could be seen from contents of Ex.X-1, it is clear that the petitioner was admitted on 11-03-2002 and discharged on 10-05-2002 with surgical interventions. The evidence of Medical Officer examined as PW.2 would show that the petitioner was operated on 12-03-2002 the wound was cleaned, dead tissue was removed and he was again operated on 30-04-2002, again skin grafting for both the feet was done by plastic surgery and he was discharged from the hospital on 11-05-2002. His evidence shows that on account of deformity of toes and presence of terminal part of great toe, PW.1 was unable to walk as a normal person and needs some assistance while walking. His evidence also shows that other four toes were not touching the ground and needs a special type of chappal and the toes were rigid and flexed and there was no movement of toes and, thus, assessed 30% of the disability.

14. The only question that arises for consideration is, whether the notional income taken by the Tribunal can be maintained or otherwise?

15. The petitioner has stated that he was a fruit vendor. A perusal of his cross-examination would show that nothing is brought out to disbelieve the petitioner's avocation. Though, the petitioner stated that he used to earn Rs.100/- per day, nothing else is forthcoming to substantiate it. Even otherwise, the statement of the petitioner ought to have been taken into consideration, in which case, at least, Rs.2,000/- per month could have been taken by the Tribunal as the income of the petitioner on fruit business during the year 2002 when the accident had occurred. Therefore, taking the income of the petitioner at

Rs.2,000/- per month or Rs.24,000/- per annum, 30% disability is worked out at Rs.7,200/-. Thus, the loss of earning capacity can be worked out at Rs.1,00,800/- by applying multiplier '14', as the petitioner was 42 years old as on the date of the accident as per the multiplier provided by the table formulated by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1]. Besides the same, towards pain and suffering, the Tribunal has granted a sum of Rs.10,000/-, but, keeping in view, the sufferance the petitioner had undergone and the inconvenience with which he had to bear throughout the rest of the life, it is enhanced to Rs.20,000/-. Towards loss of amenities of life, the Tribunal has granted Rs.15,000/- which appears to be on lower side and, therefore, the same is enhanced to Rs.25,000/-. The amount of Rs.10,000/- granted by the Tribunal towards medical expenses is maintained. Thus, in all, the petitioner is entitled to Rs.1,55,800/- (Rupees one lakh fifty five thousand and eight hundred) as compensation.

16. Concerning rate of interest, the Tribunal has granted the same at 9% per annum, the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.48,300/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2].

17. In the result, the appeal is allowed in part, and the order and decree, dated 10-03-2005, in M.V.O.P. No.821 of 2002, passed by the Tribunal, are modified, enhancing the compensation to Rs.1,55,800/- (Rupees one lakh fifty five thousand and eight

hundred) from Rs.1,07,500/- with interest at the rate of 9% per annum on the amount of Rs.1,07,500/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.48,300/-(Rupees forty eight thousand and three hundred) from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

January 21, 2016.

Mgr

[\[1\]](#). (2009) 6 Supreme Court Cases 121

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