

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.959 OF 2005

JUDGMENT:

The instant appeal is preferred by the petitioner seeking enhancement having got dissatisfied with the award of Rs.29,000/-, by order and decree, dated 26-08-2004, in M.V.O.P. No.280 of 2003, on the file of the Chairman, Motor Accident Claims Tribunal - cum - X Additional District Judge (Fast Track Court), Guntur (for short 'the Tribunal'), as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The appellant herein is the petitioners in M.V.O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of Fiat Car bearing registration No.AP 20 4599, respectively, are Respondent Nos.1 and 2, respectively.

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 the petitioner herein, who claims to be a mason by profession, was riding pillion on TVS Moped bearing registration No. AP 7H 1804 on

09-03-2003 at about

2.00 p.m., from Nadimpalli to Thakellapadu, during which time, a Fiat car bearing registration No.AP 20 4599 driven by its driver at high speed in a rash and negligent manner, hit their Moped near Mirchi Yard on Guntur - Chilakaluripet Road, due to which, he fell down and sustained injuries, more particularly, fracture of right cap into the damage legements and fracture of ankle joint. He was immediately shifted to Peoples Trauma and Emergency Hospital at Kothapet in Guntur. The concerned police also registered a case in Crime No.60 of 2003. Claiming that he was getting Rs.150/- per day as a mason and that he sustained permanent disability and unable to work as mason due to disability, sought a sum of Rs.1,00,000/- as compensation against respondent Nos.1 and 2.

5. Respondent No.1, owner of the car, remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurance Company opposed the claim, raising various pleas including the plea that the claim is bad for non-joinder of owner and insurer of the TVS Moped.

7. Based on the pleadings, the Tribunal framed three issues in the direction of fixing liability and compensation to which the petitioner entitled.

8. During inquiry before the Tribunal, in order to substantiate his case, the petitioner besides examining himself as PW.1, has examined one Irapala Srinivasa Rao and Dr. Srinivasa Rao as PWs.2 and 3, respectively, and marked Exs.A-1 to A-5. The petitioner also got marked Exs.X-1 and X-2. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

9. On issue No.1, the Tribunal found favour with the petitioner. On issue No.2, the Tribunal having assessed the daily wage at Rs.30/- or the annual income at Rs.10,000/-, taken the multiplier '17' and disability at 15%, worked out the loss of earning capacity at Rs.25,500/-. Since PW.3 did not depose as to the amenities that were lost by PW.1 on account of injury, the claim for Rs.30,000/- towards that head was rejected. On medical expenses, a sum of Rs.3,500/- was awarded and, thus, making a total amount of Rs.29,000/- was awarded as compensation.

10. Dissatisfied with the aforesaid amount, the instant appeal is preferred by the petitioner contending in the grounds that the Tribunal did not properly appreciate the evidence on record, more particularly, medical evidence, and that the Tribunal has taken the daily wages at Rs.30/- without there-being any basis, even though as

per the second schedule, the notional income for non-earning person would be Rs.15,000/- and, therefore, sought to grant balance amount.

11. Heard Sri Posani Venkateswarlu, learned counsel for the appellant - petitioner. Despite service of notices on respondent Nos.1 and 2, being the owner and insurer, none appears for them.

12. Perused the order and the evidence on record, both, oral and documentary, let in by the parties.

13. Though, PW.3, in his cross-examination, answers to a question that at the time of discharge, PW.1 was fit for discharge and his occupation was not mentioned in the case-sheet; however, answers to a question that after the last visit of PW.1, the petitioner can attend to his normal duties and he has not issued any medical bills, still, the Tribunal has taken 15% disability without there-being any disability certificate even issued by PW.3 himself.

14. Be that as it may, since respondent No.2 has not preferred any appeal, the finding recorded by the Tribunal attains finality. However, concerning daily wage of a mason during 2003 year, nothing was placed before the Tribunal and even now as to what would be the minimum wage per day that a mason would be earning in

the month of March, 2003. However, taking Rs.60/- per day as the daily wage, the amount of Rs.25,500/- granted by the Tribunal is doubled making it to Rs.51,000/- towards loss of earning capacity. __The amount of Rs.3,500/- granted by the Tribunal towards temporary loss of earnings is also doubled making it to Rs.7,000/- as at least six months rest would have been required for the petitioner to gain normalcy. The amount of Rs.3,500/- was granted by the Tribunal towards medical expenses as against Rs.30,000/- claimed by the petitioner. The amount of Rs.7,700/- mentioned in the receipt issued by the Peoples Trauma and Emergency Hospital is granted as against Rs.3,500/- granted by the Tribunal. The amounts mentioned in other bills were rightly rejected by the Tribunal, since they do not contain any signatures. The Tribunal has not granted any amount towards extra nourishment and pain and suffering. Therefore, a sum of Rs.10,000/- is granted towards pain and suffering and Rs.5,000/- towards extra nourishment, and another sum of Rs.2,000/- towards attendant charges is granted. Thus, in all, the petitioner is entitled to Rs.82,700/-

15. Concerning rate of interest, the Tribunal granted 9% per annum. The same is not disturbed on the amount granted by the Tribunal. But, on the enhanced amount of Rs.53,700/-, rate of interest at 7.5% per annum is granted

in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

16. In the result, the appeal is allowed in part, and the order and decree, dated 26-08-2004, in M.V.O.P. No.280 of 2003, passed by the Tribunal are modified enhancing the compensation to Rs.82,700/- (Rupees eighty two thousand and seven hundred) from Rs.29,000/- with interest at 9% per annum on the amount of Rs.29,000/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.53,700/- (Rupees fifty three thousand and seven hundred) from the date of petition till realization. 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

March 28, 2016.

Mgr

^[1]. 2013 ACJ 1403