

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A. No.1411 OF 2009**

**JUDGMENT:**

The present appeal is preferred by the petitioner in M.V.O.P. No.1076 of 2000 on the file of the Chairman, Motor Accident Claims Tribunal - cum - V Additional District Judge, Guntur (for short 'the Tribunal') under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') dissatisfied with the award of Rs.12,500/- as compensation as against the claim of Rs.1,00,000/- laid under Sections 140 166 of the Act and Rules 455 and 476 of the Andhra Pradesh Motor Vehicle Rules, 1989, by the order and decree, dated 03-12-2004, for the grievous injuries he sustained in a road accident that took place on 14-09-2000 at about 6.30 p.m., while he along with two others were proceeding on left side of the road margin at Enugupalem road in Vinukonda town, a lorry bearing registration No.AP 28T 8520 driven by its driver at high speed in a rash and negligent manner hit him.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.AP 28T 8520, are respondents as such in the MVOP before the Tribunal.

3. For the sake of convenience, the parties are

hereinafter referred to as they were arrayed in the OP before the Tribunal.

4. Before the Tribunal respondent No.1, owner of the lorry, remained *ex parte*.

5. Respondent No.2, insurer, opposed the claim by filing a counter.

6. The Tribunal having framed three issues, examined the petitioner as PW.1 and marked Exs.A-1 to A-5, but, no witnesses were examined and no documents were filed on behalf of the 2<sup>nd</sup> respondent and recorded the finding on issue No.1 in favour of the petitioner; and on issue No.2, as the petitioner sustained two fracture injuries of both tibia and fibula of the left leg, granted Rs.5,500/- per injury; Rs.500/- towards medical expenses and Rs.1,000/- towards pain and suffering, making a total of Rs.12,500/- and granted the same with interest at 9% per annum thereon.

7. The aforesaid order is under challenge in the instant appeal mainly on the ground that the amount granted by the Tribunal is very meager and that the Tribunal did not properly appreciate the evidence on record, hence, sought to grant balance amount.

8. Heard Sri B. Parameswara Rao, learned counsel

for the appellant - petitioner. In the cause title, it is noted that respondent No.1 is not a necessary party. Though, service was completed on respondent No.2 - M/s. Oriental Insurance Company Limited, none appears for it.

9. Perused the order and the material on record, both, oral and documentary.

10. There is no dispute with regard to the petitioner's sustaining fracture injuries of both tibia and fibula of the left leg and undergoing treatment in the Government Hospital. Be that as it may, when kept in view, the nature of injuries sustained by the petitioner, the Tribunal was not right in granting Rs.5,500/- per injury, where the mobility itself was affected considerably causing great inconvenience to the petitioner on account of the fracture of both bones of tibia and fibula of the left leg. In that view of the matter, a sum of Rs.35,000/- towards pain and suffering including injuries is granted. The amount of Rs.500/- granted by the Tribunal towards medical expenses is maintained. So far as the amount of Rs.1000/- granted by the Tribunal is concerned, it merges into Rs.35,000/- granted. The Tribunal has not granted any amount towards extra nourishment. Therefore, a sum of Rs.5,000/- is granted. Towards attendant and transport charges, another sum of Rs.5,000/- is granted. Towards loss of temporary earnings, at the rate of Rs.2,000/- per month for six (06) months, a sum of Rs.12,000/- is

granted. Thus, the petitioner is entitled to Rs.57,500/- as compensation as against Rs.12,500/- granted by the Tribunal.

11. The interest granted by the Tribunal at 9% per annum is maintained on the amount of Rs.12,500/- granted by the Tribunal, but on the enhanced amount of Rs.45,000/- the 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**<sup>[1]</sup>.

12. In the result, the appeal is allowed, and the order and decree, dated 03-12-2004, in M.V.O.P. No.1076 of 2000, passed by the Tribunal are modified enhancing the compensation to Rs.57,500/- (Rupees fifty seven thousand and five hundred) from Rs.12,500/- with interest at the rate of 9% per annum on Rs.12,500/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.45,000/- (Rupees forty five thousand) from the date of petition till realization. No order as to costs.

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

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**A. SHANKAR NARAYANA, J**

**August 02, 2016.**

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[\[1\]](#). 2013 ACJ 1403