HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1747 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.5,93,887/- as compensation by the order dated 29.03.2008 in M.V.O.P. No.234 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, City Civil Court, Secunderabad (for short, 'the Tribunal') as against the claim of Rs.19,95,623/- laid under Sections 163-A, 166 and 140(C) of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the appellant-petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. Appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the accident vehicle, i.e., lorry bearing registration No.HR 13GA 0297, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The fact-situation occurring in the instant case is not disputed, since no appeal is preferred by respondent No.2-Insurance Company challenging the award and decree by raising any grounds of violation of terms and conditions of the insurance policy.

5. Heard Sri K.Vinay Kumar, learned counsel for the appellant-petitioner, and Sri T.K.Sridhar, learned Standing Counsel for respondent No.2-Insurance Company. Despite completion of service on respondent No.1-owner of the accident vehicle, none appears for him.

6. Respondent No.2-Insurance Company opposed the claim petition on two grounds. First is that the petitioner was not employed and no proof is forthcoming. The second is that the insurance policy issued on which the petitioner is relying for claiming compensation relates to Honda City car and the insurance policy was valid from 12.10.1998 to 11.10.1999 and the cover note stands in the name of M/s. Janak Sons Import and Exports as communicated by the concerned Regional Office at New Delhi and, thus, taken a stand that the insurance policy does not relate to the lorry bearing registration No.HR 13GA 0297, which is involved in the accident herein.

7. The Tribunal, having framed three issues and examining P.Ws.1 to 4 besides marking Exs.A.1 to A.16 on behalf of the petitioner, recorded findings on issue Nos.1 and 2 in favour of the petitioner and awarded Rs.50,000/- towards pain and suffering, Rs.3,45,887/- towards medical expenses and extra nourishment, Rs.8,000/- towards transport charges and Rs.1,000/- towards damages to clothing. Towards loss of future loss of earning capacity, the Tribunal has treated disability as 70% assessed by the doctor under Ex.A.8, since the petitioner sustained amputation of right leg above

the knee level, but however, rejecting the stand that the petitioner was employed and earning Rs.10,000/- per month in Clair Engineers Private Limited by assigning reasons in refusing to accept the evidence of P.W.3 and Ex.A.13, which was only appointment letter and, in the provisions of the recitals in Ex.A.3-certified copy of the charge sheet showing that the petitioner was a student at the time of the accident, taken notional income of Rs.15,000/- per annum and applied multiplier '18' and arrived at Rs.1,89,000/- (Rs.15,000/- x 18 x 70%) towards permanent disability and, thus, granted a total compensation of Rs.5,93,887/- with interest at 7.5% per annum from the date of petition till realization.

8. At the outset, it is to be observed that respondent No.2-Insurance Company agitated that the insurance policy does not relate to the lorry involved in the accident and it relates to Honda City car, basing on the communication sent by the Regional Office at New Delhi, taking into consideration the cover note alone, still, the Insurance Company failed to examine any of the officials and produce the cover note on which it was relying. Ex.A.16-copy of insurance policy marked on behalf of the petitioner and Ex.A.6-copy of cover note. The Tribunal basing on the evidence on record and considering Ex.A.16, held that the stand taken by the Insurance Company is not proved and, thereby, fastened liability on the Insurance Company to pay the compensation awarded. However, since no appeal is preferred by the Insurance Company, that stand also goes.

9. Now the short question that falls for consideration is, whether the compensation assessed by the Tribunal is just and adequate or whether the petitioner is entitled to enhancement?

10. The findings recorded by the Tribunal in discarding Ex.A.13-appointment letter and excluding the evidence of P.W.3 cannot be faulted as cogent reasons were assigned. In fact, the petitioner ought to have secured concrete material and got marked through the management of the said company by producing acquittance register and other related documents and also showing that there has been deduction at source level, in case the petitioner is an income tax assessee. Hence, that finding recorded by the Tribunal is maintained.

11. Now turning to the amounts granted by the Tribunal under each head. The amount of Rs.50,000/- granted by the Tribunal towards pain and suffering is maintained.

12. Even the amount of Rs.3,45,887/- granted by the Tribunal towards medical expenses and extra nourishment is maintained.

13. However, concerning the cash bills under Ex.A.14 relating to the travelling expenditure, the Tribunal refused the same on the ground that none is examined to prove the documents and, thereby, granted only Rs.8,000/- towards transport charges. However, when kept in view, that the petitioner suffered amputation and was

treated in Nizam Institute of Medical Sciences Hospital and he was resident of somewhere nearby locality of ECIL, certainly, the amount of Rs.33,584/- sought for under this head can be granted. Therefore, the amount of Rs.8,000/- granted by the Tribunal is enhanced to Rs.33,584/- under the said head.

14. The amount of Rs.1,000/- granted by the Tribunal towards damages of clothing is maintained.

15. Towards the earnings of the petitioner, the Tribunal has taken notional income of Rs.15,000/- per annum mentioned in the table annexed to the Schedule II of Section 163-A of the Act, but the law declared by the Hon'ble Supreme Court is to the effect that even a labourer is construed to be earning Rs.3,000/- per month. Therefore, taking the income as Rs.3,000/- per month or Rs.36,000/- per annum, disability at 70% and multiplier factor '18', the amount of compensation towards partial permanent disability would work out to Rs.4,53,600/- (Rs.36,000/- x 18 x 70%) and the same is granted as against Rs.1,89,000/- granted by the Tribunal.

16. Towards attendant charges, no amount is granted by the Tribunal. Therefore, a sum of Rs.12,000/- is awarded at the rate of Rs.2,000/- per month for a period of six months.

17. Thus, the petitioner is entitled to a total sum of Rs.8,96,071/- (Rupees eight lakhs ninety six thousand and seventy one) as against Rs.5,93,887/- granted by the Tribunal towards

compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 7.5% per annum and the same is maintained on the entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[1].

18. 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.

19. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

17th September, 2016

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[1] 2013 ACJ 1403