

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2017 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant - petitioner, aggrieved by the order and decree dated 23.02.2007, passed in M.V.O.P.No.197 of 2005 by the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional District and Sessions Judge, Tenali, Guntur District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.50,000/- was awarded towards compensation with interest @ 7.5% per annum, as against the claim of Rs.1,00,000/- laid under Sections 166 and 163-A of the Act and Rules 455 and 476 of A.P. Motor Vehicle Rules, 1989, for the injuries sustained by him in a road accident that occurred on 17.01.2005, seeking enhancement of compensation.

2. The appellant herein is petitioner, respondent No.1 is the owner of offending Auto bearing No.AP 7X 6023, and respondent No.2 - Oriental Insurance Company Limited is respondent No.2 in M.V.O.P.No.197 of 2005. For the sake of convenience, the parties are referred to as they were arrayed in M.V.O.P.No.197 of 2005 before the Tribunal.

3. Since no appeal is preferred by the 2nd respondent – Insurance Company and this being an appeal by the claim petitioner, the facts relating to the sustaining of injuries by the petitioner and the finding recorded by the Tribunal on the aspect of negligence in favour of the petitioner need no advertence. The only dispute is with regard to quantum of compensation awarded by the Tribunal, on the ground that the Tribunal has not granted just and fair compensation.

4. Heard Sri B. Parameswara Rao, learned counsel for the appellant – petitioner. Though, respondent No.2 – Insurance Company is served with notice, none appears on its behalf. There is an endorsement in the cause title partition of the grounds of appeal that respondent No.1 is not a necessary party to this appeal.

5. Perused the order under challenge and evidence available on record.

6. The Tribunal has taken the age of the petitioner as 40 years as on the date of accident. The Tribunal, having accepted the partial permanent disability sustained by the petitioner, as spoken to by P.W.2 – Dr. J. Hanumantha Rao, who treated the petitioner, however, by not completely agreeing with 20% disability sustained by the petitioner, as certified by the doctor, reduced it to 10%, and after fixing the income of the petitioner as Rs.15,000/- per annum, for want

of legally acceptable evidence as regards his earnings, and after applying the relevant multiplier '16', arrived at a sum of Rs.24,000/- ($\text{Rs.15,000/-} \times 10/100 \times 16 = \text{Rs.24,000/-}$) towards permanent physical disability. Besides the same, the Tribunal also granted Rs.7,000/- towards pain and suffering, Rs.9,000/- towards medical expenses, and Rs.10,000/- towards attendant charges, nutrition food and transportation charges. Thus, a total compensation of Rs.50,000/- was awarded. Aggrieved by the same, the present appeal is preferred by the petitioner.

7. The evidence of P.W.2 – Doctor would show that it would be difficult for P.W.1 (petitioner) to squat freely and sit in gross leg posture and that has been the reason why he assessed the partial permanent disability sustained by the petitioner as 20%. Therefore, by accepting the partial permanent disability sustained by the petitioner as 20%, the amount granted by the Tribunal towards that end is doubled, thus making it to Rs.48,000/-. Further, the amount granted towards pain and suffering is enhanced to Rs.10,000/-, while maintaining the amounts of Rs.9,000/- and Rs.10,000/- granted towards medical expenses and towards attendant charges, nutrition food and transportation charges, respectively. Thus, the petitioner is entitled to a total compensation of Rs.77,000/- as against the compensation of Rs.50,000/- granted by the Tribunal. The enhanced amount

of Rs.27,000/- (Rs.77,000/- - Rs.50,000/-) also shall carry interest @ 7.5% per annum, as was awarded by the Tribunal on the compensation granted by it.

8. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.50,000/- to Rs.77,000/- (Rupees seventy seven thousand only) with interest at 7.5% per annum, as awarded by the Tribunal, on the enhanced amount of compensation also, from the date of the petition till realisation. No order as to costs.

9. As a sequel, miscellaneous petitions pending, if any, shall stand closed.



JUSTICE A. SHANKAR NARAYANA

26.09.2016.
Msr

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2017 of 2009



26.09.2016
Msr