

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1384 OF 2009

JUDGMENT:

On the ground that a meagre compensation of Rs.26,000/- was granted by order and decree, dated 01.08.2006, in O.P.No.281 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal, Nellore, as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the present appeal, under Section 173 of the Act, is preferred by the petitioner in the said O.P. seeking enhancement of compensation.

2. Perused the order under challenge and the evidence on record.

3. The Tribunal has passed a common order deciding O.P.No.281 of 2001, from which the order under challenge arises, along with O.P.No.282 of 2001, which relates to death claim.

4. Learned counsel for the appellant would represent that no appeal was preferred against the order in O.P.No.282 of 2001.

5. Heard Sri T.C. Krishnan, learned counsel for the appellant, and Smt. A. Jayanthi, learned counsel for respondent No.2. Respondent No.1, though, served with notice, none appears for him.

6. Learned counsel for the appellant would submit that, though, PW.4 assessed the disability at 20%, in view of the grievous injuries

sustained by the appellant, being swelling and contusion of right thigh, X-ray of which reveals fracture of right femur, and abrasion of right knee, the Tribunal has not considered the same. But, the observation made by the Tribunal in paragraph No.21 of the order under challenge would show that the appellant, though, admitted on 22.01.2001 in Government Head Quarters Hospital, Nellore, he himself got discharged on 24.01.2001 against medical advice and it appears that he took treatment under local bone setters at Puttur, and on that premise, the Tribunal has refused to accept 20% disability spoken to by PW.4, besides no disability certificate being forthcoming. Therefore, that finding recorded by the Tribunal is well reasoned and based on appreciation of evidence in accordance with the evidentiary rule, which, certainly, does not warrant any interference. Hence, the same is upheld.

7. What is required to be seen in this appeal is, whether the compensation granted by the Tribunal, under the circumstances herein, is just and adequate, or whether the appellant is entitled to enhancement of compensation?

8. The Tribunal has granted Rs.3,000/- towards loss of earnings for a period of three months basing on the entries made by the Doctors pursuant to PW.2's statement that his income was Rs.1,000/- per month. Therefore, the same is maintained. An amount of Rs.8,000/- was granted towards medical expenses and transport charges,

including special diet, which does not require any further enhancement. Towards pain and suffering, an amount of Rs.5,000/- was granted, besides granting Rs.10,000/- towards disability. As against the consolidated amount of Rs.15,000/- granted under these two heads, a sum of Rs.50,000/- is granted, in view of the injury and fracture sustained by the appellant as mentioned in the above. Thus, the appellant is totally entitled to Rs.61,000/-.

9. The Tribunal has granted interest at 7.5% per annum, which is on par with the decision of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹. Hence, the same is maintained on the enhanced amount also.

10. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.26,000/- to Rs.61,000/- with interest at 7.5% per annum from the date of petition till realisation.

11. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 02, 2016.
MD

¹ (2013) 9 SCC 54