

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.2645 OF 2005

JUDGMENT:

This Civil Miscellaneous Appeal is preferred by the petitioner seeking enhancement of compensation on the ground that only an amount of Rs.61,520/- was granted against owner and insurer of the vehicle involved in the accident through the order and decree, dated 12-04-2005, in M.V.O.P. No.195 of 2001, by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Guntur (for short 'the Tribunal'), with a direction to the insurer to initially pay the compensation and recover the same from the owner of the vehicle.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, which are owner and insurer, respectively, of the lorry bearing No.AP-31-T-4213 that involved in the accident, are respondent Nos.1 and 2 respectively.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4(a) The facts, in brief, are that on 06-01-2001 at about 8.00 a.m., while the petitioner was going on a

bicycle with vegetables from Gundavaram to Vadlamudi, near Vadlamudi Crossroads, a lorry bearing No.AP-31-T-4213, came from behind, driven in a rash and negligent manner at high speed without blowing horn, hit the petitioner, due to which he sustained severe injuries to his both legs and was admitted in Government General Hospital, Guntur, for treatment. The Station House Officer, Chebrolu Police Station registered a case in Crime No.5 of 2001 for the offence under Section 338 of the Indian Penal Code (IPC) against the driver of the lorry.

(b) Claiming that he was a vegetable vendor and earning Rs.100/- per day and he sustained permanent disability, petitioner laid the claim for Rs.1,60,000/- under Sections 166 and 163-A of the Motor Vehicles Act, 1988 (for short 'the Act').

5. Respondent No.1, owner of the lorry involved in the accident, filed counter opposing the claim by raising various grounds.

6. Respondent No.2, insurer of the lorry involved in the accident, filed counter requiring the petitioner to prove the valid insurance policy and driving licence of the driver of the lorry and also the injuries sustained by the petitioner including the manner in which the accident had occurred and finally sought to dismiss the claim petition against it.

7. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident, thus:

“1. Whether the accident occurred due to rash and negligent driving of the driver of tipper bearing No.AP-31-T-4213 ?

2. Whether the petitioner is entitled to compensation and if so, to what amount and against whom ?

3. To what relief ?”

8. During enquiry, petitioner examined himself as PW.1 besides examining Dr. Y. Lakshman Swamy as PW.2 and marked Exs.A-1 to A-8. On behalf of the insurer, its Assistant Divisional Manager was examined as RW.1 and marked Exs.B-1 to B-4, which are insurance policy, certificate issued by the Additional Licensing Authority, Guntur, letter addressed by the insurer to the Road Transport Authority, Guntur (RTA), and the certificate issued by RTA, Guntur, with regard to driving particulars of the lorry driver.

9. On issue No.1, the Tribunal having analysed the evidence of PW.1 and Exs.A-1 and A-2 recorded a finding that due to rash and negligent driving of the driver of the lorry, the accident had occurred. On issue No.2, accepting the disability of 20% on account of fracture to

both bones of left leg due to crush injury and taking notional income of the petitioner as Rs.15,000/- per annum, his age as 18 years, by applying multiplier '16', arrived loss of earning capacity at Rs.48,000/- (Rs.15,000/- x 16 x 20%) and besides the same, granted a sum of Rs.5,000/- towards treatment charges, Rs.3,520/- towards medical expenses and Rs.5,000/- towards pain and suffering, and, thus, awarded a total sum of Rs.61,520/- towards compensation with interest at 9% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal by the petitioner.

11. Heard Sri A. Rajendra Babu, learned counsel for the petitioner (appellant).

12. There is no representation for the insurer. The appeal was dismissed for default against respondent No.1, insured, by the orders of this Court, dated 05.01.2012. However, since the insured had suffered decree passed by the Tribunal and in view of the decision of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[1], it makes no difference to decide the controversy herein in the absence of the insured.

13. The injuries sustained by the petitioner as reflected from Ex.A-3 wound certificate would show that

he sustained fracture of both bones of left leg, crush injury on medial and posterior aspects of right foot and pain and tenderness over the lower 1/3rd of the left leg and the ankle exposing bones, muscles and tendons and other injuries and that the medical officer expressed that both the injuries are grievous in nature. The petitioner also sustained 20% permanent disability. The Tribunal has recorded a finding accepting 20% disability spoken to by PW.2 as there was fracture of both bones of left leg and crush injury on the right foot and ankle. Since no appeal appears to have preferred by the insurer, the said finding cannot be interfered with.

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14. On notional income taken by the Tribunal at Rs.15,000/- per annum, since the petitioner was 16 years old at the relevant time, though, the Tribunal has taken his age as 18 years, in the absence of any income proof to show that he was earning Rs.100/- per day by selling vegetables, the same can be maintained. Coming to multiplier factor, it should be '18' but not '16' in view of the decisions of the Hon'ble Supreme Court in **Amrit Bhanu Shali and others v. National Insurance Company Limited and others**^[2] and **Sarla Verma v. Delhi Transport Corporation**^[3] and when multiplier '18' is applied, it works out to Rs.2,70,000/- (Rs.15,000/- x 18) and 20% thereof comes to Rs.54,000/- (Rs.2,70,000/- x

20%) and the same is accordingly granted as against Rs.48,000/- granted by the Tribunal towards permanent disability suffered by him.

15. Concerning expenses of treatment and medicines, the amounts of Rs.5,000/- and Rs.3,520/- granted by the Tribunal are maintained. An amount of Rs.15,000/- is granted towards pain and suffering as against Rs.5,000/- granted by the Tribunal keeping in view, the nature of injuries sustained by the petitioner and pain and suffering he had undergone. The Tribunal has not granted any amount towards extra-nourishment, as such, Rs.5,000/- is granted under this head. Towards transport and attendant charges, a sum of Rs.2,000/- and Rs.5,000/-, respectively, are granted, for which no amount was granted by the Tribunal.

16. Thus, the petitioner is entitled to a total compensation of Rs.89,520/- (Rupees eighty nine thousand and five hundred and twenty only) as against Rs.61,520/- awarded by the Tribunal, and the same is accordingly granted, maintaining the rate of interest at 9% per annum on the amount granted by the Tribunal while granting interest at 7.5% per annum on the enhanced compensation, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others** ^[4], from the date of petition till realisation.

17. The direction of the Tribunal to the insurer to initially pay the compensation and recover the same from the insured is maintained since no appeal is preferred by the insurer.

18. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned order and enhancing the compensation,
as indicated above. 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 21, 2016.

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[\[1\]](#) 2001 (1) ALT 495 (D.B.)

[\[2\]](#) 2012 AIR SCW 3901

[\[3\]](#) (2009) 6 SCC 121

[\[4\]](#) 2013 ACJ 1403 = 2013(4) ALT 35