

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

**M.A. C.M.A. No.1458 OF 2009**

**JUDGMENT:**

The instant Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), is preferred by the petitioner seeking enhancement of compensation on the ground that a meager amount of Rs.27,500/- was granted towards compensation for the injuries suffered by him, by the learned Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District Judge, Guntur, through the order and decree, dated 12.03.2008, in M.V.O.P. No.649 of 2006, as against his claim of Rs.1,00,000/- laid under Section 163-A of the Act.

2. The appellant herein is petitioner in the M.V.O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of the Mini lorry bearing No.AP-7-TT-6986 that involved in the accident, are respondent Nos.1 and 2 respectively.

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

4. Heard Sri B. Parameswara Rao, learned counsel for the petitioner (appellant), and Ms. V. Durga, learned counsel for respondent No.2, insurer.

5. In the grounds of appeal, it is mentioned that respondent No.1, owner of the Mini Lorry bearing No.AP-7-TT-6986 that involved in the accident, is not a necessary party.

6. Before the Tribunal, Doctor viz., Dr. A. Srinivas Rao is also examined as PW.2. His evidence shows that he has examined the petitioner, who was examined as PW.1, on 05.05.2006, when he was admitted with the compound fracture of both bones of right leg. PW.1 was operated on 06.05.2006, with interlocking nail and was discharged on 16.5.2016. Later, on 06.11.2006, he was again admitted in the hospital and on 07.11.2006, screws were removed by conducting an operation and discharged on 08.11.2006. He has also asserted as to restriction of terminal degrees of right knee joint movements which caused difficulty in squatting and sitting cross legged and assessed permanent disability as 10% based on Exs.X-1 and X-2, case sheet and X-ray film, respectively, and, for removal of the nail, expenditure has been stated at Rs.4,000/- to Rs.5,000/-. No doubt, PW.3 was cross-examined by the learned counsel for the insurer, but he denied the suggestion that if the petitioner undergoes physiotherapy, the disability would be reduced.

7. The Tribunal while granting medical expenses, somehow, did not grant the amounts of Rs.11,000/- and Rs.5,000/- covered by Exs.A-5, dated 16.05.2006 and 08.11.2006, and Rs.3,478/- covered by A-6. The evidence of PW.2 proves that the petitioner admitted twice in the hospital and has undergone surgical interventions for the

purposes mentioned in the above while narrating the evidence of PW.2. Certainly, the Tribunal was not right in refusing these amounts. Therefore, the amount of Rs.11,000/- covered by the bill dated 16.05.2006 and Rs.5,000/- covered by the bill dated 8.11.2006 under Ex.A-5 and the amount of Rs.3,478/- covered by bunch of bills under Ex.A-6, evidencing payment also, are granted as against Rs.3,000/- granted by the Tribunal.

8. The Tribunal has granted Rs.20,000/- towards pain and suffering. The nature of injuries, referred to above, i.e., fracture of both bones of right leg, when kept in view, the pain and suffering undergone by the petitioner by undergoing two surgical interventions and another surgical intervention yet to undergo for removal of nails, the amount of Rs.20,000/- granted by the Tribunal is enhanced to Rs.35,000/-. The Tribunal has granted Rs.1,500/- towards loss of income, just taking into account eleven (11) days stay of the petitioner as inpatient in the hospital. It is not as though that, the moment the petitioner was discharged from the hospital, he was fit to pursue his avocation when the injury is to one of the main limbs affecting his mobility. In that view of the matter, at the rate of Rs.2,000/- per month, for a period of three (3) months, a sum of Rs.6,000/- is awarded towards loss of temporary earnings as against Rs.1,500/- granted by the Tribunal. Even the amount of Rs.1,000/- granted by the Tribunal towards extra-nourishment and other charges is far below than what was expected. Since the petitioner has incurred some

expenditure towards attendant charges and extra-nourishment, Rs.5,000/- is awarded towards extra-nourishment and Rs.2,000/- towards travelling expenses.

9. Thus, the petitioner is entitled to an amount of Rs.67,478/- (Rupees sixty seven thousand four hundred and seventy eight only) towards compensation as against Rs.27,500/- granted by the Tribunal and the same is accordingly granted. The rate of interest at 7.5% per annum granted by the Tribunal is maintained on the entire compensation from the date of petition till realisation, since the same is in accordance with the law pronounced by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**<sup>1</sup>.

10. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order under challenge 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.

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**A. SHANKAR NARAYANA, J**

**August 3, 2016.**  
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<sup>1</sup>2013 ACJ 1403 = 2013(4)ALT35