

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.670 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the next friend of the appellant-petitioner, who is her father, aggrieved by the order and decree dated 18.11.2008, passed in O.P.No.435 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Sangareddy, Medak District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.1,25,000/- was awarded towards compensation with interest @ 7.5% per annum, as against the claim of Rs.7,00,000/- laid under Section 166 of the Act, for the injuries sustained by her in a road accident, seeking enhancement of compensation.

2. The appellant herein is petitioner, respondent No.1 - owner of offending Lorry bearing No.HR 38L 7377 is respondent No.1; and respondent No.2 - M/s. Oriental Insurance Company Limited is respondent No.2, in O.P.No.435 of 2006. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.435 of 2006 before the Tribunal.

3. Heard M/s. Mohan Vinod & Associates, learned counsel for the appellant - petitioner, and Ms. V. Durga, learned Panel

Advocate for 2nd respondent – insurer. Though, 1st respondent – owner is served, none appears for him.

4. The fact-situation and the manner in which the accident had occurred are not in dispute.

5. The short question involved in this appeal is, whether the compensation granted by the Tribunal is just and adequate?

6. Learned counsel for the petitioner would submit that the Tribunal has not properly appreciated the evidence on record and though, it considered the disability sustained by the petitioner as 25%, as against 50% disability sustained by her, as spoken to by P.W.2, since the right arm of the petitioner, who is aged 8 years, at the time of accident, has become dis-functional, which is supported by the evidence of P.W.2, the amount of Rs.1,00,000/- granted by the Tribunal towards partial permanent disability, is totally on lower side and, even the other amounts were not granted appropriately and, therefore, sought to grant the balance amount, as claimed.

7. On the other hand, learned Panel Advocate appearing for the 2nd respondent – insurer would resist the prayer sought by the petitioner, on the premise that the Disability Certificate was not, at all, issued and, in the absence of which, the Tribunal, in fact, was not right in construing 25%

disability and granting a sum of Rs.1,00,000/- for the fracture sustained by the petitioner to her right hand is just and adequate and, therefore, would submit that the petitioner is not entitled to any amount than what was awarded by the Tribunal.

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

9. The Tribunal did not elaborate by assigning valid reasons, as to how it has taken 25% disability into consideration and just granted Rs.1,00,000/- towards partial permanent disability, treating it as 25%, only by placing reliance on the judgment in **Jayaprasad Vs. Rejimon Philip**¹, of-course by mentioning that the petitioner sustained two fractures to right hand, and also granted a sum of Rs.25,000/- towards pain and suffering for two fracture injuries.

10. It is no doubt true, the Disability Certificate is not issued, except the oral evidence of P.W.2 on record, still, in the light of the sufferance undergone by the petitioner and even the photographs in respect of the injuries sustained by her were also affixed to the claim petition, certainly, the finding recorded by the Tribunal treating the disability sustained by the petitioner as 25%, basing on the evidence of P.W.2, cannot be faulted and, therefore, the sum of

¹ 2008 ACJ 1272

Rs.1,00,000/- granted by the Tribunal towards partial permanent disability, is maintained. Even the amount of Rs.25,000/- granted by the Tribunal towards pain and suffering, is also maintained.

11. However, the Tribunal has not granted any amounts towards other heads. Hence, the petitioner is entitled to a sum of Rs.10,000/- towards extra-nourishment, a sum of Rs.15,000/- towards transportation and attendant charges. Since the disability treated by the Tribunal is partial disability to the right hand of the petitioner, which would have caused great inconvenience to her and the petitioner has to bear with it through out, certainly, towards loss of amenities, as a separate head, a sum of Rs.25,000/- is granted. Thus, the petitioner is totally entitled to a compensation of Rs.1,75,000/- (Rs.1,00,000/- + Rs.25,000/- + Rs.10,000/- + Rs.15,000/- + Rs.25,000/- = Rs.1,75,000/-), as against the compensation of Rs.1,25,000/- awarded by the Tribunal, with interest @ 7.5% per annum on the enhanced amount also, which rate of interest was awarded by the Tribunal on the compensation granted by it.

12. Accordingly, this Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.1,25,000/- to Rs.1,75,000/- (Rupees one lakh seventy five thousand only) with interest @ 7.5% per annum, on the

enhanced amount also, from the date of the petition till realization. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

01.09.2016.
Msr



HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.670 of 2009



01.09.2016
Msr