

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2495 OF 2009

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), is preferred by the petitioner in M.V.O.P. No.799 of 2006 seeking enhancement of compensation on the ground that the amount of Rs.53,100/- granted by the learned Chairman, Motor Accidents Claims Tribunal - cum - X Additional District and Sessions Judge (Fast Track Court), Guntur at Narasaraopet through the order and decree dated 25.06.2008, as against his claim of Rs.1,50,000/- laid under Section 163(A) of the Act and Rules 455, 475 and 476 of the Andhra Pradesh Motor Vehicles Rules 1989, is very meager, since he sustained partial permanent disability, but the Tribunal has taken notional income despite the fact that he was working as a Clerk in Venkateswara Dall Mill earning Rs.3,000/- per month.

2. Heard Sri B. Parameswara Rao, learned counsel for the appellant (petitioner).

3. Despite service of notice, respondent No.1 - owner of the Jeep bearing No.AHV - 6277 that involved in the accident has not entered appearance.

4. Even respondent No.2, insurer viz., The New India Insurance Company Limited, through its Divisional Manager, Guntur District, though, served with notice, none appears.

5. Therefore, there is no need to advert to the factual aspect as to how the petitioner sustained injuries.

6. The only question that arises for consideration is whether the compensation granted by the Tribunal is just and adequate in the circumstances of the case?

7. The petitioner examined himself as PW.1 and the doctors, who treated him, as PWs.2 and 3 and PW.1 has spoken to that he has spent Rs.65,000/- as per Ex.A-5 entries, asserted by PW.2, medical officer, and Rs.31,890/- for the treatment he has undergone in Aswini Hospital, but, unfortunately, the claim petition was laid under Section 163-A of the Motor Vehicles Act, 1988, in which case, it is difficult to grant Rs.50,000/-.

8. Turning to the injuries and earnings of the petitioner, the disability at 12.5% is spoken to by PW.3 and considered by the Tribunal. So far as earnings are concerned, the Tribunal has taken notional income of the petitioner at Rs.15,000/- per annum as provided in Schedule - II to Section 163-A of the Act, computed the same by applying multiplier '15', taking the age of the petitioner as 43 years. Though, no documentary proof is forthcoming, the fact that petitioner being 43 years old, must be pursuing some occupation, but

cannot be an un-earning member, that cannot be lost sight off. Therefore, even going to the extent that the normal tendency is to get higher compensation, the earnings of the petitioner can be put at Rs.2,000/- per month which would work out to Rs.24,000/- per annum and when 12.5% disability is calculated, it works out to Rs.3,000/- (Rs.24,000/- x 12.5%). When the multiplier factor '15', as provided in Schedule - II to Section 163-A of the Act for the age group of the petitioner who was 43 years old at the relevant time, is applied, the petitioner would be entitled to Rs.45,000/- (Rs.3,000/- x 15) towards disability as against Rs.28,125/-. The amount of Rs.2,000/- granted by the Tribunal towards pain and suffering is enhanced to Rs.10,000/-; and towards extra nourishment, a sum of Rs.5,000/- is granted besides Rs.4,000/- towards attendant charges and Rs.1,000/- towards conveyance/transport charges. Towards loss of temporary earnings for a period of three (3) months, a sum of Rs.6,000/- is granted at Rs.2,000/- per month. The amounts of Rs.10,000/- and Rs.5,000/- granted by the Tribunal towards hospital charges in two hospitals and Rs.5,000/- for purchase of medicines, are maintained.

9. Thus, the petitioner is entitled to a total compensation of Rs.96,000/- (Rupees eighty six thousand only) as against Rs.53,100/- awarded by the Tribunal, and the same is accordingly granted maintaining the rate of interest granted by the Tribunal at 7.5% per annum on the entire compensation, which includes enhanced compensation, since the same is in accordance with the rate of interest

granted by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

10. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the order and decree under challenge by enhancing the compensation, as indicated above. There shall be no order as to costs.

11. As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

November 2, 2016.

PV

2. 2013ACJ1403 = 2013(4)ALT35

A. SHANKAR NARAYANA, J

