

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.497 of 2009

JUDGMENT:

Not satisfied with the amount of Rs.27,000/- granted as compensation by the order dated 19.11.2003 in M.V.O.P.No.542 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal'), as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, the instant appeal is preferred by the petitioner seeking enhancement for the injuries sustained by her.

2. The appellant is the petitioner, while respondent Nos.1 to 4, who are the owners of both the vehicles i.e., the lorry bearing registration No. AP 16 U 653 and the Tipper bearing registration No. AP 9 T 9846 and the respective insurers, were respondent Nos.1 to 4 in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts would show that on 22.04.1999, two vehicles i.e., lorry bearing registration No. AP 16 U 653

and the Tipper bearing registration No. AP 9 T 9846 were involved in the accident. On that day, the petitioner along with some others was travelling in the said tipper from the place where they were working, to their village, Chebrole, during which time, the said lorry, coming in opposite direction driven in a rash and negligent manner, dashed the tipper, resulting in injuries to the petitioner and others. The petitioner has arrayed the owners of both the vehicles and the respective Insurance Companies as parties to the O.P filed by her claiming compensation of Rs.1,00,000/-.

5. The Tribunal, basing on the pleadings of the parties, framed three issues about the responsibility for the accident.

6. During enquiry, the petitioner examined herself as P.W.1, besides examining Dr. M. Ramamohana Rao as P.W.2, and marked Exs.A1 and A2. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

7. The Tribunal, having framed three issues and examined the relevant documents filed on behalf of the petitioner and the respondents, while dismissing the claim petition against respondent Nos.3 and 4, the owner and insurer of the tipper in which the petitioner was travelling,

fastened the liability on respondent Nos.1 and 2 to pay the compensation of Rs.27,000/- determined by it. The Tribunal of course, accepted 15% disability basing on the evidence of P.W.2, though, no medical certificate was issued, and granted a sum of Rs.25,000/- towards the said head and a sum of Rs.2,000/- towards extra-nourishment, making a total sum of Rs.27,000/-, with interest at 9% per annum as compensation.

8. Heard Sri Posani Venkateswarlu, learned counsel for the appellant, Sri N.Mohan Krishna, learned counsel for respondent No.2 – insurer of the lorry, who is the contesting respondent, and Sri B.Venkat Ratnam, learned counsel for respondent No.4

9. Respondent No.1 refused to receive the notice. As against respondent No.3, the appeal was dismissed for default.

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

11. Though, the petitioner was treated with POP, she was treated as inpatient for about ten days in GGH, Guntur, for the fracture of shaft of humerus of right upper limb. The evidence of P.W.2 would show that there has been loss of physical function to the extent of 15%, so far

as the right shoulder joint of the petitioner is concerned. However, when kept in view the same, certainly, the amount of Rs.25,000/- granted by the Tribunal towards pain and suffering is on lower side and, therefore, the same is enhanced to Rs.40,000/-. Towards extra-nourishment, Rs.2,000/- granted by the Tribunal is enhanced to Rs.5,000/- and towards transportation and other incidental charges, an amount of Rs.5,000/- is granted. Thus, the petitioner is entitled to Rs.50,000/-, as against Rs.25,000/- granted by the Tribunal.

12. So far as the rate of interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount of Rs.25,000/- granted by it, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realisation as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

13. According, the appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous

applications, if any pending in the instant appeal, shall stand closed.

**JUSTICE A.SHANKAR
NARAYANA**

26.07.2016
v v

[\[1\]](#) 2013 ACJ 1403