THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.2593 of 2009

JUDGMENT:

The present appeal is preferred, requesting to enhance the compensation, on the ground that the amount of Rs.67,000/- with interest at 7.5% per annum granted by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Khammam (for short 'the Tribunal'), by his order and decree dated 25.03.2009 in M.V.O.P.No.20 of 2007, is very meager and not in accordance with the legal principle governing determination of compensation, though, there has been amputation of right foot leading to partial permanent disability at 40%, as certified by the doctor examined as P.W.2, besides the fracture of left thigh and the claim being Rs.2,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988.

2. The fact-situation occurring in the instant case, as to taking place of the accident and the injuries sustained by the petitioner, is not in dispute.

3. The Tribunal rendered common order in the present M.V.O.P. and M.V.O.P.No.19 of 2007, having framed three issues and examined P.Ws.1 and 2 and marked Exs.A1 to A7 on behalf of the petitioner, and examined R.W.1, but no documents were marked on behalf of the Insurance Company, in the present O.P., and having

analysed the evidence of P.W.2 and the contents of Ex.A6-disability certificate, granted Rs.5,000/- towards medical expenses, Rs.25,000/- for crush injury of right leg, Rs.15,000/- for fracture of left thigh, Rs.2,000/- for simple injury and Rs.15,000/- for amputation of right foot, besides granting Rs.5,000/- towards pain and suffering, thus, a total sum of Rs.67,000/- was awarded as compensation.

4. Heard Sri Gajanand Chakravarthy, learned counsel for Sri S.R.Cherukuri, learned counsel for the appellant, and Sri N.S.Bhaskar Rao, learned Standing Counsel for respondent No.2 – Insurance Company. Though, service was not completed on respondent No.1, since he remained *ex parte* before the Tribunal, his absence makes no difference in adjudicating the request made herein.

5. The documentary evidence marked as Ex.A6 would clearly show that the disability assessed by the doctors was 40%. The learned Standing Counsel for the Insurance Company, of course, resists it on the ground that the disability certificate marked as Ex.A6, would show that it can be used only for the purpose of bus pass, but, having looked at the entry at Sl.No.22 of Part-II of Schedule-I of the Workmen's Compensation Act, 1923, he fairly concedes that the percentage of disability would be 50%. The said entry would show amputation of one foot resulting in end-bearing towards percentage of loss of earning capacity. Therefore, the Tribunal ought to have applied

structural formula, rather than resorting to awarding amounts in lumpsum taking into consideration only the nature of injuries.

6. So far as the earnings of the petitioner are concerned, her stand is that she was an agricultural coolie earning Rs.150/- per day. However, discarding the said amount i.e., Rs.150/- per day, which appears to be somewhat exaggeration, since the claim petitioner would be tending to do so in order to get enhanced compensation, it would be reasonable to consider Rs.100/- per day as daily wage or Rs.3,000/- per month or Rs.36,000/- per annum. The relevant multiplier for the age group between 36 and 40 is '15'. When the said multiplier is applied taking 40% disability, the loss of future earnings would work out to Rs.2,16,000/- (Rs.36,000 x 15 x 40%). Thus, the petitioner is entitled to the said amount for amputation of foot and for the grievous injury sustained to the left thigh and other injuries. Besides the same, the other amounts granted by the Tribunal i.e., a sum of Rs.5,000/- towards pain and suffering and Rs.5,000/- towards medical expenses, are maintained. Towards extra-nourishment, no amount was granted by the Tribunal, but, the petitioner is entitled to a sum of Rs.5,000/- under the said head and the same is, accordingly, granted.

7. Thus, the petitioner is entitled to a total sum of Rs.2,31,000/- towards compensation, as against Rs.67,000/- granted by the Tribunal, and the same is accordingly granted.

8. So far as the rate of interest is concerned, the Tribunal granted 7.5% per annum and the same is maintained on the enhanced amount also in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[1].

9. Accordingly, the appeal is partly allowed 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.

10. As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE A.SHANKAR NARAYANA

31.08.2016
v v

[1] 2013 ACJ 1403