

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1869 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant-petitioner, aggrieved by the common order and decree dated 23.10.2007, passed in O.P.No.64 of 2006 (along with O.P.Nos.65 and 69 of 2006), by the Chairman, Motor Accidents Claims Tribunal (I Additional District Judge), Mahabubnagar District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.25,000/- was awarded towards compensation with interest @ 7.5% per annum, as against the claim of Rs.1,00,000/- made under Section 166 of the Act, for the injuries sustained by her in a motor accident that occurred on 04.10.2005 at 2.30 p.m., seeking enhancement of compensation.

2. The appellant herein is petitioner, respondent No.1 – owner of the offending Jeep bearing No.ADN 2797 is respondent No.1, and respondent No.2 – National Insurance Company Limited is respondent No.2, in O.P.No.64 of 2006.

3. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.64 of 2006 before the Tribunal.

4. Heard Sri K. Venkatesh Gupta, learned counsel for the appellant – petitioner. Though, service was completed on respondent Nos.1 and 2, who are owner and insurer, respectively, none appear for them.

5. Perused the order under challenge and evidence available on

record.

6. The fact situation, the manner in which the accident had occurred and the responsibility for the accident are not in dispute.

7. The Tribunal, in fact, disposed of the claim petition by way of a common order dated 23.10.2007, in O.P.Nos.64, 65 and 69 of 2006, as the petitioners in the respective claim petitions sustained injuries in one and the same accident, who were examined as P.Ws.1 to 3, besides examining P.W.4 – Dr. Anand, who treated them, and the documentary evidence under Exs.A.1 to A.13, marked on their behalf; and Ex.B.1 – Copy of Insurance Policy, marked on behalf of the 2nd respondent – insurer.

8. Since the 2nd respondent – insurer has not preferred any appeal, there is no need to advert to the finding recorded by the Tribunal on issued No.1 as to the responsibility for the accident.

9. On issue No.2, the Tribunal, accepting 30% disability sustained by the petitioner, applied multiplier '5', by taking the aggregate income of the petitioner @ Rs.12,000/- per annum, arrived at a sum of Rs.20,000/- towards future loss of earnings of the petitioner. Besides the same, the Tribunal granted a sum of Rs.500/- towards medical expenses, Rs.500/- towards transportation charges, and Rs.1,500/- towards loss of earnings, thus a total compensation of Rs.22,500/- was awarded. However, instead of mentioning the total compensation granted as Rs.22,500/-, inadvertently, the Tribunal mentioned the same as Rs.25,000/-.

10. Be that as it may, when the petitioner suffered 30%

disability, which is not in dispute, the Tribunal ought not to have taken the annual earning capacity of the petitioner as Rs.12,000/-, when the II-Schedule itself provides annual income at Rs.15,000/-. Therefore, taking the annual income of the petitioner as Rs.15,000/-, when the same is multiplied by '7', which is applicable for the age group between 61 and 65 years, as per the table provided in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1], it comes to Rs.1,05,000/-, and 30% thereof would workout to Rs.31,500/-. Thus, the petitioner is entitled to a sum of Rs.31,500/- towards gross loss of income.

11. This apart, instead of the amount of Rs.1,500/- granted towards loss of earnings, keeping in view the nature of injury sustained by the petitioner, which is a fracture of left humerus, which ultimately was found to be not united as per the evidence of P.W.4 – Doctor, @ Rs.1,200/- per month for 6 months, a sum of Rs.7,200/- is granted towards temporary loss of earnings; a sum of Rs.10,000/- is granted towards pain and suffering, a sum of Rs.5,000/- is granted towards extra-nourishment. The amounts of Rs.500/- towards medical expenses and Rs.500/- towards transportation charges granted by the Tribunal are maintained. Thus, the petitioner is entitled to a total sum of Rs.54,700/- (Rs.31,500/- + Rs.7,200/- + Rs.10,000/- + Rs.5,000/- + Rs.500/- + Rs.500/- = Rs.54,700/-) towards compensation, as against the sum of Rs.22,500/- (though wrongly mentioned as Rs.25,000/-) granted by the Tribunal, with interest @ 7.5% per annum on the enhanced amount also.

12. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.22,500/- to

Rs.54,700/- (Rupees fifty four thousand seven hundred only) with interest @ 7.5% per annum on the enhanced amount also, which was the rate of interest awarded by the Tribunal on the amount granted by it. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

27.08.2016.

Msr

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[\[1\]](#) (2009) 6 Supreme Court Cases 121