

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1992 OF 2009

JUDGMENT:

The present appeal is preferred by the petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking enhancement of compensation. Having got dissatisfied with the award of Rs.28,000/- as compensation granted by the learned Chairman, Motor Accident Claims Tribunal - cum - VII Additional District Judge, Guntur (for short 'the Tribunal'), by order and decree, dated 18-11-2005, in M.V.O.P. No.596 of 2002, as against the claim of Rs.1,50,000/- laid under Sections 140, 141, 163-A and 166 of the Act, for the injuries sustained by the petitioner including permanent disability at 10% considered by the Tribunal.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer of auto-rickshaw bearing registration No.AP 7T 7244, respectively, are respondents as such in MVOP before the Tribunal.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in MVOP.

4. Heard Sri T.S. Rayalu, learned counsel for the petitioner. Though, service was completed on owner and insurer of the accident vehicle, who are respondent Nos.1 and 2, none appears for them.

5. The learned counsel for the appellant - petitioner would submit that the petitioner being a painter, fracture to his right elbow which accounts for partial permanent disability affected his profession and, therefore, to construe the disability of 10% accepted by the Tribunal as 100% disability and to award the compensation.

6. There is no need to refer to the fact-situation, as there is no dispute in regard to the liability being fastened on the Insurance Company. The injuries spoken to by PW.2 are compound fracture, dislocation of right elbow, and injury to right wrist. The Tribunal having noted the injuries, granted Rs.10,000/- towards each grievous injury. Thereafter, the Tribunal taking into consideration 10% disability mentioning the age as '16' years and the income at Rs.10,000/- per annum and applying multiplier factor '16', worked out the compensation of Rs.1,60,000/- and 10% thereof amounting to Rs.16,000/- was granted. The Tribunal also considering the amount of Rs.638.75ps. spent by the petitioner based on the medical bills, granted a sum of Rs.2,000/- towards medical expenses and, thus, a total compensation of Rs.28,000/- was granted with interest at 7.5% per annum.

7. The said award is questioned by the petitioner in the instant appeal on the ground that the Tribunal has not properly appreciated the evidence on record and just and adequate compensation was not granted.

8. The injuries are referred to in the above. The petitioner was admitted in Orthopaedic ward in Government General Hospital, Guntur on 03-03-2002, and was discharged on 15-04-2000, having undergone closed reduction of right elbow joint and right wrist reducing the dislocation on the same day of PW.1's admission.

9. PW.2, Orthopaedic Doctor, though, spoken to 20% disability in respect of the injury to right forearm, the Tribunal reduced it to 10%, which is permanent and partial; the income of the petitioner was fixed at Rs.10,000/- per annum by the Tribunal; and the petitioner was admittedly 16 years old, but entries in Ex.X-1, x-ray sheet, would show that he was 20 years old. Even putting him in the age group of 16-20 years, the relevant multiplier would be '18'. So far as the income is concerned, the amount of Rs.10,000/- taken by the Tribunal as notional income is without any reason being assigned. Therefore, viewing the income at Rs.24,000/- and the disability of 10% applying '18' multiplier factor, the loss of future earning capacity or the partial permanent disability works out to Rs.43,200/-. The amounts granted by the Tribunal i.e., Rs.2,000/- towards medical expenses and miscellaneous expenditure and Rs.10,000/- towards pain and suffering are maintained. Besides the same, Rs.5,000/- is granted towards extra nourishment and Rs.6,000/- towards attendant and transport charges. Thus, in all, the petitioner is entitled to Rs.66,200/- as compensation as against Rs.28,000/- awarded by the Tribunal.

10. Concerning rate of interest, the Tribunal awarded 7.5% per annum. The same is maintained, even on enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

11. In the result, the appeal is allowed in part, and the order and decree, dated 18-11-2005, in M.V.O.P. No.596 of 2002, passed by the Tribunal are modified enhancing the compensation to Rs.66,200/- (Rupees sixty six thousand and two hundred) from Rs.28,000/- granted by the Tribunal with interest at 7.5% per annum thereon from the date of petition till realization. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

September 27, 2016.
Mgr

¹. 2013 ACJ 1403