

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1902 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.55,000/- as compensation, as against the claim of Rs.75,000/- laid under Section 166 of the Motor Vehicles Act, 1988, by order, dated 16.06.2005, in O.P.No.1083 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, II Fast Tract Court, Nalgonda, the petitioner preferred the instant appeal seeking enhancement of compensation.

2. The appellant is petitioner, whereas respondent Nos.1 and 2 are respondent Nos.1 and 2 in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts in brief are that, on 17.05.2001 at about 06:00 PM, when the petitioner was standing on the left side of the road near the bus stage of Inupamula Village on National Highway No.9, a Scooter bearing registration No.AP-09-B-5475 coming from Suryapet side driven by

respondent No.1 in a rash and negligent manner at high speed dashed him, due to which, he sustained fracture to his leg. He was shifted to Kamineni Hospital, Narketpally, where he had undergone treatment as inpatient for about one month and had spent huge amounts. According to him, he lost salary for the said period and became permanently disabled. Hence, he sought compensation of Rs.75,000/- against respondent Nos.1 and 2, who are the owner and insurer of the Scooter, respectively.

5. Before the Tribunal, respondent No.1 – owner of the Scooter remained *ex parte*. Respondent No.2 opposed the claim by filing counter.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues. During enquiry, petitioner examined himself as PW.1 besides examining the Doctor working in Kamineni Hospital as PW.2 by taking out commission and marked Exs.A1 to A11 to substantiate the claim laid. On behalf of respondent No.2, no oral evidence was let in, but attested copy of the Insurance Policy was marked as Ex.B1 on consent.

7. On issue No.1, the Tribunal, on appraisal of evidence on record, recorded a finding in favour of the petitioner. On issue No.2, the Tribunal, on the ground that

the petitioner has not submitted his salary certificate, disbelieved the stand of the petitioner that he was drawing Rs.18,000/- per month by working as M.E.O. and though, it has taken into consideration the Disability Certificate, Ex.A4, wherein it was mentioned that the petitioner sustained 40% partial permanent disability, and the evidence of PW.2, who has spoken to the said percentage of disability, still without resorting to structured formula in determining the compensation towards loss of future earning capacity, has granted Rs.10,000/- towards 40% disability besides granting a sum of Rs.10,000/- towards grievous injury and pain and suffering, Rs.20,000/- towards medical expenses, attendant charges, transportation and extra nourishment, Rs.10,000/- towards future operation and Rs.5,000/- towards loss of expectation of life, amenities, pleasure and loss of earnings, thus, totalling to a sum of Rs.55,000/- with interest at 8% per annum from the date of petition till the date of realisation.

8. Seeking enhancement of compensation, petitioner preferred the instant appeal contending in the grounds that the Tribunal somehow, overlooked the percentage of disability at 55% mentioned in the Certificate, and ignoring the version of PW.2 that the petitioner required Rs.1,00,000/- towards future operation and the amount spent towards medical expenses at

Rs.48,756.76 ps. covered by Ex.A11, granted lesser amount without assigning any reason.

9. Heard Sri V. Praveen Kumar, learned counsel for the appellant, and Smt. Pushpinder Kaur, learned counsel for respondent No.2 – insurer. Though, it is shown in the cause list that notice sent to respondent No.1 is not yet returned, in view of the fact that he suffered decree passed by the Tribunal by remaining *ex parte*, his absence would not make any difference in adjudicating upon the request made in the instant appeal in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[1], wherein it was held that:

“If the claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance. But the quantum of compensation cannot be decided over and above the statutory liability of the

Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage.”

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

11. The evidence of PW.2, who was working as Orthopaedic Surgeon at Kamineni Hospital, shows that the petitioner sustained fracture of neck of femur on right side and got operated on 21.05.2001 having been brought to their hospital on 19.05.2001 and discharged on 31.05.2001 with an advice to come up for regular follow up and physiotherapy. His evidence also shows that the petitioner may require one more operation in future, which would be total hip replacement and the cost of which may be approximately Rs.1,00,000/-, and due to the operation performed, the petitioner will not be able to sit on the floor or walk for long distance. His evidence proves the medical bills, Ex.A11 consisting of 25 in number, showing the total amount spent at Rs.48,756.76 ps.. Ex.A4 was issued by the Medical Board showing the disability as 40%. When the evidence of PW.2 is so specific proving Ex.A11, the Tribunal was not justified in restricting the medical expenses to Rs.20,000/- without assigning any reason despite referring to Ex.A11. Therefore, the amount granted by the Tribunal at Rs.20,000/- towards medical

expenses is enhanced to Rs.49,000/-, as Ex.A11 itself would show the expenses at Rs.48,756.76 ps. The Tribunal has granted Rs.10,000/- towards grievous injury and pain and suffering. When kept in view, the nature of injury and the sufferance the petitioner had undergone, in the light of the evidence of PW.2 mentioned above, the same requires enhancement and therefore, it is enhanced to Rs.25,000/-. The amount of Rs.10,000/- granted towards 40% disability is maintained as the petitioner has not produced any salary certificate or other material to show that he was drawing Rs.18,000/- per month. The amount of Rs.10,000/- granted towards future operation is also maintained as the petitioner has not come up with any additional evidence showing that he has undergone future operation and incurred any amount. Further, the amount of Rs.5,000/- granted towards loss of expectation of life, loss of amenities, pleasure and loss of earnings is also maintained. Thus, the petitioner is totally entitled to a sum of Rs.99,000/- as against Rs.55,000/- granted by the Tribunal. The interest awarded by the Tribunal at 8% per annum is maintained on the original amount of Rs.55,000/- awarded by the Tribunal and on the enhanced amount, the petitioner is entitled to interest at 7.5% per annum, as per the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2].

12. The amount determined herein exceeds the claim made by the petitioner, but there could not be any prohibition in granting excess amount than the amount claimed in view of the decisions of the Honourable Apex Court in **Nagappa v. Gurudayal Singh and others**^[3], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**^[4] and **Rajesh's case** (supra 2), wherein, it was held that it is the duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made. However, the petitioner is directed to pay Court fee on the excess amount granted by this Court than the claim made within a period of three months from today.

13. Thus, the instant appeal is allowed. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

February 11, 2016.

MD

^[1] 2001 (1) ALT 495 (D.B.)

[\[2\]](#) (2013) 9 SCC 54

[\[3\]](#) AIR 2003 SC 674

[\[4\]](#) 2012 ACJ 191 (SC)