

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

C.M.A. Nos.3266 AND 3067 of 2004

COMMON JUDGMENT:

Since both these appeals arise out of one and the same accident, they are being disposed of by this common judgment.

2. These two appeals arise out of the common order, dated 14.11.2003, in M.V.O.P. Nos.248 and 249 of 2002 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum -

IV Additional District Judge, Kurnool, whereby and whereunder, the Tribunal granted a sum of Rs.19,750/- so far as former appeal is concerned and Rs.44,235/- concerning the latter appeal towards compensation for the injuries sustained by the respective petitioners, who laid the claims under Section 140 and 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

3. The appellants herein are the petitioners in the respective O.Ps. before the Tribunal while respondent Nos.1 and 2, who are owner and insurer, respectively, of the Jeep bearing No.AP-02-C-1251 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

5. Both the petitioners laid claim petitions for grant of Rs.1,00,000/- each for the injuries they sustained while they were proceeding to a Water Channel to fetch water, near Kambagiri Swamy Temple, 60 Kilometers to West of Owk Police Station, when Trax Jeep bearing No.AP-02-C1251 came from their behind, driven in a rash and negligent manner by its driver, and hit them. Both of them sustained fracture injuries, treated in Government General Hospital, Kurnool, and claimed that they spent Rs.20,000/- each towards medical and attendant charges; and stating that they were earning Rs.150/- per day by doing coolie work, sought the aforesaid compensation.

6. Respondent No.1, who is owner of the Jeep that involved in the accident, remained *ex parte* before the Tribunal.

7. Respondent No.2, insurer of the Jeep, opposed the claim by raising various pleas.

8. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as

well as negligence in taking place of the accident.

9. During trial, the Tribunal has taken up both the matters for joint trial and on behalf of the petitioners, examined PWs.1 to 3 besides marking Exs.A-1 to A-4; and on behalf of the insurer marked Ex.B-1, a copy of the insurance policy of the vehicle involved in the accident, but no witnesses were examined.

10. The Tribunal, having appraised the evidence on record, held issue No.1 in favour of the petitioners. On issue No.2, so far as the former O.P. is concerned, having found that there was fracture of humerus of left upper limb and basing on the evidence of the doctor, who was examined as PW.3 on behalf of the petitioners and, though, he assessed the permanent disability at 15%, taken the permanent disability at 10% and daily wage at Rs.50/-, which works out to Rs.1,500/- per month, assessed the loss of earning capacity, by applying multiplier '7.68' treating the age of the petitioner as 47 years, at Rs.13,824/-, besides granting Rs.1500/- towards medical expenses, and Rs.4,425/- towards loss of temporary earnings, and, thus, granted a compensation of Rs.19,750/-.

11. In the latter O.P., fixing the same wage and the same percentage of disability, but keeping in view, the age of the petitioner as 20 years, applied multiplier '17.95' and arrived at the loss of earning capacity as Rs.32,310/-,

whereas, temporary loss of earning capacity at Rs.4,425/-, Rs.1500/- towards medical expenses besides Rs.6,000/- for four simple injuries sustained by the petitioner at Rs.1,500/- for each simple injury, and, thus awarded a total compensation of Rs.44,235/- with interest at 9% per annum.

12. Dissatisfied with the compensation granted by the Tribunal, the instant appeals have been preferred by the respective petitioners requesting to grant the balance amount contending that the Tribunal ought to have taken wages of the petitioners at Rs.150/- per day, and the disability suffered by them ought to have taken at 15% and ought not to have reduced it to 10%.

13. Heard Sri A. Jaya Sankara Reddy, learned counsel for the petitioners (appellants), in both the appeals, and Sri G. Ramachandra Reddy, learned counsel for the insurer - respondent No.2 in MA CMA No.3266 of 2004, and Sri P. Harinath Gupta, learned counsel for the insurer - respondent No.2 in MA CMA No.3067 of 2004.

14. The petitioners have endorsed that respondent No.1, owner of the vehicle involved in the accident, is not a necessary party in these appeals as he remained *ex parte* and suffered the decree passed by the Tribunal.

15. Perused the common order and decrees under challenge and the material on record.

16. It is glaring that the Tribunal has not granted any amount towards pain and suffering, extra-nourishment and other incidental expenses, though, granted Rs.1,500/- towards medical expenses without there being medical proof. Be that as it may, the wages taken by the Tribunal at Rs.50/- per day which works out to Rs.1,500/- per month and the disability sustained by the petitioners at 10%, cannot be disturbed. The multiplier, so far as the petitioner in the former appeal is concerned, is '14' in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**^[1] and when the same is applied as against '7.68' applied by the Tribunal, it works out to Rs.2,52,000/- (Rs.1,500/- x 12 x 14) and 10% thereof comes to Rs.25,200/- and the same is, accordingly, granted towards loss of earning capacity. The amount of Rs.1,500/- granted by the Tribunal towards medical expenses and Rs.4,425/- towards loss of temporary earnings do not warrant interference. Further, the appellant is entitled to a sum of Rs.10,000/- towards pain and suffering, Rs.5,000/- towards extra-nourishment and another sum of Rs.2,000/- towards travelling expenses and attendant charges.

17. Thus, the petitioner in the former appeal is

entitled to a total compensation of Rs.48,125/- (Rupees forty eight thousand and one hundred and twenty five only) as against Rs.19,750/- granted by the Tribunal and the same is accordingly granted. The rate of interest on the compensation granted by the Tribunal at 9% per annum from the date of petition till realisation is maintained, however, on the enhanced compensation, it is fixed at 7.5% per annum from the date of petition till realisation, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2].

18. Turning to the latter appeal, the multiplier factor '17' was taken by the Tribunal as against '18', the relevant multiplier, in view of the decision in **Sarla Verma's Case** (Supra 1) since the petitioner was 20 years old at the relevant time, and when the same is applied, it works out to Rs.3,24,000/- (Rs.1,500/- x 12 x 18) and 10% thereof comes to Rs.32,400/- and the same is, accordingly, granted towards loss of earning capacity. The amount of Rs.1,500/- granted by the Tribunal towards medical expenses and Rs.4,425/- towards loss of temporary earnings are maintained. So far as Rs.6,000/- granted by the Tribunal for four simple injuries is concerned, the same is enhanced to Rs.12,000/- at Rs.3,000/- each as against Rs.1,500/- granted by the Tribunal. An amount of Rs.10,000/- is granted towards extra-nourishment and

Rs.3,000/- towards attendant and travelling expenses.

19. Thus, the petitioner in the latter appeal is entitled to a total compensation of Rs.63,325/- (Rupees sixty three thousand and three hundred and twenty five only) as against Rs.44,235/- granted by the Tribunal and the same is accordingly granted. The rate of interest on the compensation granted by the Tribunal at 9% per annum from the date of petition till realisation is maintained, however, on the enhanced compensation, it is fixed at 7.5% per annum from the date of petition till realisation, in view of the decision in **Rajesh's Case** (Supra 2).

20. Thus, both the appeals are allowed in part modifying the impugned common order passed by the Tribunal, by enhancing the compensation, as stated supra. There shall be no order as to costs.

21. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals stand disposed of.

A. SHANKAR NARAYANA, J

June 21, 2016.

PV

[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2013ACJ1403 = 2013(4)ALT35