

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1356 OF 2009

JUDGMENT:

The present appeal is preferred by the petitioner in O.P.No.301 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal – cum – District Court, Warangal, assailing the order and decree, dated 12.10.2006, passed in the said O.P., on the ground that the compensation of Rs.7,60,000/- granted by the Tribunal as against the claim of Rs.10,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is on lower side and, not just and adequate and, thus, seeks to enhance the compensation by way of granting the balance amount, for the loss of both hands below the elbow level in a road accident by construing the disability at 100% rather than 70% towards loss of future earning capacity, as he was working as a Clerk in Vijaya Traders, Warangal.

2. The appellant is the petitioner, while respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, respectively, 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 needed for disposal of the present appeal are that on 29.04.2004, while the petitioner along with his friend was proceeding towards Station Ghanpur on TVS Victor motorcycle bearing registration No.AP-36-H-8295, at about 06:00 AM, when they reached near Railway Over-Bridge at Kazipet, a tractor and trailer bearing registration Nos.AP-36-U-5720 and 5721 driven by its driver in a rash and negligent manner dashed the TVS Victor motorcycle, due to which, the petitioner fell down and the tractor tyres ran over his both hands resulting in fractures. He was immediately shifted to Sri Ganesha Orthopaedic Hospital, Hanamkonda, where he had undergone surgical interventions, ultimately, resulting in amputation of his both hands below the elbow level. The petitioner, claiming that he was working as Clerk in Vijaya Traders and, since, he lost his both hands, he was removed from the job and, thus, suffered permanent disability, and that he has spent Rs.1,20,000/- towards medicines, treatment and extra nourishment, sought a sum of Rs.10,00,000/- towards compensation from respondent Nos.1 and 2, who are the owner and insurer of the tractor and trailer, respectively.

5. Respondent No.1, owner of the tractor and trailer, remained *ex parte* before the Tribunal.

6. Respondent No.2 filed counter opposing the claim raising specific plea touching upon the violation of

the terms and conditions of the policy.

7. Based on the rival pleadings, the Tribunal has framed three issues about the responsibility for accident.

8. During enquiry, petitioner, besides examining himself as PW.1, examined Dr. P. Surender Reddy, who treated the petitioner, as PW.2, and Dr. S. Laxminarayana, who issued Ex.A6 - Disability Certificate stating therein that the petitioner sustained 70% disability, as PW.3, and marked Exs.A1 to A9 to substantiate the claim laid. On behalf of respondent No.2, no oral evidence was let in, but copy of the Insurance Policy was marked as Ex.B1.

9. The Tribunal, having recorded a finding in favour of petitioner on issue No.1, on issue No.2, while excluding Ex.A5 – Salary Certificate issued by Vijaya Traders, Warangal, on the ground that the author of Ex.A5 was not examined, though, referred to Ex.A4– Identity Card of the petitioner, taken the notional income of the petitioner at Rs.4,500/- per month and worked out 70% thereof at Rs.3,150/-, and by applying multiplier '18', taking the age of the petitioner as 26 years, arrived at Rs.6,80,000/- towards loss of future earnings due to the partial permanent disability and granted the same. That apart, the Tribunal has granted a sum of Rs.50,000/- towards medical expenses, basing on the evidence of Medical Officers, besides granting Rs.30,000/- towards pain and suffering, thus, making a total of Rs.7,60,000/- with

interest at 7.5% per annum.

10. Seeking to grant the balance amount of Rs.2,40,000/-, the present appeal is preferred by the petitioner contending that the Tribunal ought to have taken 100% disability, since on account of the amputation of both the hands, he lost his employment.

11. Heard Sri A. Prabhakar Rao, learned counsel for the appellant, and Sri A. Veera Swamy, learned counsel for respondent No.2. The appellant has endorsed in the cause title of the appeal that respondent No.1 is not a necessary party.

12. Learned counsel for the appellant – petitioner would submit that in view of amputation of both hands of the petitioner, including loss of employment of the petitioner, the Tribunal ought to have taken the percentage of disability at 100%, but it, somehow, overlooked the same, though it has referred to Ex.A4 – Identity Card of the petitioner.

13. On the other hand, learned counsel for Insurance Company would submit that the Tribunal ought not to have taken the notional income of the petitioner at Rs.4,500/- per month and it ought to have resorted to Second Schedule to Section 163A of the Act, as Ex.A5 – Salary Certificate was not proved, and that what was awarded by the Tribunal as compensation itself is on

higher side.

14. It is a very pathetic case where the petitioner lost his both upper limbs and consequently, the job even, at the age of 26 years. In fact, the Tribunal ought to have granted certain amounts towards extra nourishment and amenities. When, kept in view, the loss of both hands, in view of the amputation below the elbow level, and loss of employment disabling the petitioner to pursue definite avocation, certainly, the Tribunal ought to have taken the disability at 100%. Thus, when the disability is considered at 100%, the claim of Rs.10,00,000/- made by the petitioner cannot be construed as excessive or arbitrary, and it would be just and reasonable to grant Rs.10,00,000/- without embarking upon the calculations based on the percentage of disability.

15. Hence, the compensation of Rs.7,60,000/- awarded by the Tribunal is enhanced to Rs.10,00,000/-, which is the claim made by the petitioner in the O.P.

16. So far as interest is concerned, the Tribunal has granted interest at 7.5% per annum. The same rate of interest is maintained on the enhanced amount also, in view of the decision of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

17. Accordingly, the appeal is allowed enhancing

the compensation from Rs.7,60,000/- to Rs.10,00,000/- with interest at 7.5% per annum. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR

NARAYANA, J
August 09, 2016.
MD

[\[1\]](#) (2013) 9 SCC 54