

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3826 OF 2004

JUDGMENT:

The National Insurance Company Limited, represented through its Branch Manager, Branch Office, Jawahar Road, Nizamabad, which is respondent No.2 in O.P. No.192 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal'), aggrieved by the order dated 09.07.2004, whereby and whereunder, the Tribunal awarded a sum of Rs.1,41,762/- with interest at 9% per annum as against the claim of Rs.2,75,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by respondent No.1 herein in a road accident, preferred the instant appeal under Section 173 of the Act challenging the lump sum compensation of Rs.75,000/- granted towards disability. Concerning other components, Rs.25,000/- towards pain and suffering, Rs.23,762/- towards medical expenses as per Exs.A.7, A.8, A.9 and A.12-bills and Rs.18,000/- towards loss of earning for a period of six months, there is no challenge, but however, concerning rate of interest at 9%, on the ground that it is on higher side and claimed that the same be reduced to 7.5% per annum.

2. Appellant herein is respondent No.2, while respondent No.1 herein is the petitioner and respondent

No.2 herein, who is the owner of the auto bearing registration No.AET-86, is respondent No.1 in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 03.02.2020, while the petitioner along with others was going in an auto bearing registration No.AET-86 from Nizamabad bus stand to Mubaraknagar and when it reached near Laxminarsimha Swamy temple turning on National Highway No.16 road at Dasnagar at about 4-00 p.m., since the driver of the auto drove it in a rash and negligent manner at high speed, lost control over it and when he applied sudden brakes, it turned upside down resulting injuries to the petitioner and others. Due to the said accident, the petitioner lost seven teeth and sustained fracture injury on his neck femur right side and injuries on other parts of his person and Dr. L.Ramulu treated him and he got admitted in a private hospital and undergone treatment from 03.02.2002 to 13.02.2002. He, thus, laid claim for Rs.2,75,000/- against respondent Nos.1 and 2, who are owner and insurer of the auto.

5. Respondent No.1-owner of the auto remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining two doctors as P.Ws.2 and 3 and marked Exs.A.1 to A.14 and Exs.C.1 and C.2 to substantiate his claim; whereas, on behalf of respondent No.2, one S.Suresh was examined as R.W.1 and Exs.B.1 and B.2, which are copies of insurance policy and driving licence, were marked.

7. On appraisal of evidence let in by the parties, the Tribunal held issue No.1 in favour of the petitioner; and on issue Nos.2 and 3, taking into consideration the nature of injuries sustained and since there has been some variation between the percentage of disabilities spoken to by P.Ws.2 and 3 and the certificates issued by them marked as Exs.C.1 and C.2, granted Rs.75,000/- without adopting structural formula and granted other sums as stated above.

8. It is the aforesaid order which is under challenge in the instant appeal mainly on the ground that without resorting to structural formula, the Tribunal granted Rs.75,000/- towards partial permanent disability, which is improper.

9. Heard Sri T. Ramulu, learned Standing Counsel for respondent No.2 (appellant-Insurance

Company). No representation for the petitioner (respondent No.1 herein). Though, respondent No.1-owner of the vehicle (respondent No.2 herein) is not served with notice, but he suffered decree by remaining *ex parte* before the Tribunal, and, therefore, his absence in the instant appeal makes no difference in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[1].

10. Learned Standing Counsel for respondent No.2 (appellant-Insurance Company) submits that though, initially Insurance Company has challenged the lump sum compensation of Rs.75,000/- granted by the Tribunal towards percentage of permanent disability, but even keeping in view the percentage of disability spoken to by P.W.3, the amount that would be arrived would approximately the same, if structural formula is resorted to in determining the compensation.

11. In view of the said submission made by the learned Standing Counsel for the Insurance Company, there is no need to probe further. Therefore, the amount granted by the Tribunal under various heads is maintained. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum, but the same is reduced to 7.5% per annum on the entire amount of compensation from the date of petition till realization in view of the decision of the Hon'ble Apex Court in **Rajesh**

and others Vs. Rajbir Singh and others^[2].

12. Accordingly, the instant appeal is partly allowed reducing the rate of interest, as indicated above, while maintaining the order in all other respects. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

1st March, 2016

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

^[2] 2013 ACJ 1403