

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1933 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.51,200/- , as compensation as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, by order and decree, dated 13.11.2003, in M.O.P.No.1642 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, Visakhapatnam, the petitioner – claimant preferred the instant appeal seeking enhancement of compensation.

2. The appellant is the petitioner, whereas respondent No.1, who is the driver of the R.T.C. bus, is respondent No.1 and respondent No.2 – corporation is respondent No.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 03.10.2001 at about 08:00 PM, while the petitioner was driving his Auto bearing registration No.AH-Q-1079 with passengers towards Gopalapatnam and when it reached near Gopalapatnam Post Office on the main road, an R.T.C. bus bearing registration No.AP-9-Z-7235 coming from

Gopalapatnam and proceeding towards N.A.D. Kotha Road driven at high speed in a rash and negligent manner dashed the Auto, due to which, the petitioner sustained fracture of both bones of his right leg below knee and certain abrasions over his face. The petitioner, claiming that he was admitted in K.G. Hospital, Visakhapatnam, treated as inpatient for some days, underwent surgical intervention by insertion of steel rods and has spent Rs.25,000/- towards operation, medicines, treatment and extra nourishment, and that he was 22 years old earning Rs.3,000/- per month on his occupation as driver of the Auto, sought a sum of Rs.2,00,000/- as compensation.

5. Before the Tribunal, respondent No.1, driver of the R.T.C. bus, has not filed any counter, but, respondent No.2 – corporation has resisted the claim by filing a detailed counter.

6. Based on the said pleadings, the Tribunal has settled three issues for trial in regard to fixing the liability as well as determination of compensation.

7. During enquiry, petitioner besides examining himself as PW.1 also examined the Doctor by name, M. Venkateswara Rao as PW.2, who has issued Disability Certificate under Ex.A5 showing the disability as 30% of the right leg of the petitioner, and marked Exs.A1 to A9 besides marking Exs.X1 and X2, which are Case Sheet

(MLC) and Case Sheet (Non MLC), respectively, to substantiate the claim. On behalf of the respondents, respondent No.1 examined himself as RW.1, but no documents were filed.

8. The Tribunal, on issue No.1, held that due to the rash and negligent driving of RW.1, the accident had taken place. On issue No.2, considering the evidence of PW.2 and observing that there is every possibility of curing the disability and it is not permanent disability, granted Rs.40,000/- as against Rs.1,00,000/- claimed by the petitioner. The Tribunal also granted Rs.1,000/- towards temporary loss of earnings, Rs.200/- towards transport charges, Rs.5,000/- towards extra nourishment and medical expenses on the ground that the petitioner took treatment in Government hospital, and Rs.5,000/- towards pain and suffering, making a total sum of Rs.51,200/- with interest at 9% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal contending that the Tribunal without assigning any proper reason excluded Ex.A5 and the disability spoken to by PW.2 at 30% and it ought to have granted Rs.1,00,000/- towards the disability as against the amount granted by it and the amount granted under other heads are also very meagre and therefore, sought to grant the balance amount.

10. Heard Sri T.M.K. Chaitanya, learned counsel for the appellant, and Sri K. Sarvabouma Rao, learned counsel for respondent No.1. No representation for respondent No.2, when the matter is called.

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

12. It is no doubt true that the Tribunal despite taking cognisance of 30% disability mentioned in Ex.A5 and as spoken to by PW.2, has granted Rs.40,000/- under the said head, but it appears that towards loss of future earning capacity, the Tribunal has granted the said amount. It is clear from the evidence of PW.2 that he has not treated the petitioner, as he made a specific admission in his cross examination. He has also not asserted in his chief examination as to how he arrived at 30% disability and whether there was mal-union of fractured bones, and he has not even referred to whether any X-rays were taken by the petitioner when he approached him. Perhaps, it appears that to speak about the issuance of Ex.A5, he has stepped into the witness box. So, the amount of Rs.40,000/- granted towards the said head is maintained for the aforesaid reasons, as there is no clarity in the evidence of PW.2 to resort to the structural formula method to assess the future loss of earning capacity. However, concerning the amounts granted under other heads, it appears that the Tribunal has granted very

meagre amount towards loss of earnings i.e., a sum of Rs.1,000/- despite the fact that one of the lower limbs of the petitioner was affected in the accident and steel rod was also fixed. Hence, the same is enhanced to Rs.12,000/-, taking six months on an average of Rs.2,000/- per month. The amount of Rs.200/- granted towards transport charges is enhanced to Rs.2,000/-. Towards pain and suffering, the Tribunal has granted Rs.5,000/-, but, keeping in view, the nature of injuries sustained by the petitioner and the suffering he had undergone, the same is enhanced to Rs.15,000/-. Towards extra nourishment, the Tribunal has granted Rs.5,000/- and the same is enhanced to Rs.10,000/-. Thus, the petitioner is entitled to a total sum of Rs.79,000/- . The interest awarded by the Tribunal at 9% per annum is maintained on the original amount of Rs.51,200/- 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**^[1].

13. Accordingly, the instant appeal is allowed in part. 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

March 18, 2016.
MD

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