

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.2628 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.34,000/- towards compensation as against the claim of Rs.1,00,000/- laid under

Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 13.07.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - VII Additional District Judge, Guntur, in O.P. No.993 of 2003, seeking enhancement of compensation.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the auto-rickshaw bearing No.AP-7-X-3890 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4(a) The facts would show that on 15.10.2003 at 3.00 p.m., while the petitioner was travelling as a

passenger in the auto-rickshaw bearing No.AP-7-X-3890 from Chinakakani to go to Mangalagiri, near NRI Hospital, since driver of the auto-rickshaw drove it in a rash and negligent manner at high speed, it turned upside down, resulting injuries to him and immediately he was shifted to Government Hospital, Mangalagiri.

(b) The Station House Officer, Mangalagiri Rural Police Station, registered a case against the driver of the auto-rickshaw in Crime No.116 of 2003.

(c) Claiming that he was 35 years old at the relevant time earning Rs.100/- per day by doing welding work, petitioner sought a sum of Rs.1,00,000/- towards compensation.

5. Respondent No.1, owner of the auto-rickshaw involved in the accident, filed his counter stating that the claim is excessive; however, stated that his auto-rickshaw was insured with respondent No.2, insurer, under valid insurance policy, as such, insurer alone is liable to pay compensation, if any, and sought to dismiss the claim against him.

6. Respondent No.2 filed counter opposing the claim raising various ground mainly contending that at the relevant time more than eight (8) passengers were allowed to travel in the auto-rickshaw violating terms and

conditions of the insurance policy and the same resulted in accident.

7. 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.

8. During enquiry, petitioner examined himself as PW.1 besides examining the doctor as PW.2 and marked Exs.A-1 to A-6 and also Exs.X-1 to X-4. On behalf of the respondents, no oral or documentary evidence was adduced.

9. The Tribunal, on overall analysis of evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, arriving the permanent disability suffered by the petitioner at 10%, as against 20% spoken to by PW.2 only in relation to pelvis, considering the age of the petitioner as 36 years and his notional income at Rs.15,000/- per annum, worked out total future loss of earning capacity at Rs.24,000/-. Besides the same, granted Rs.5,000/- towards medical expenses. Thus, a total sum of Rs.34,000/- was granted to the petitioner with interest at 9% per annum.

10. It is the aforesaid order, which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal ought not to have reduced the permanent disability from 20% to 10% overlooking the

evidence of PW.2 and ought to have taken earnings of the petitioner at Rs.100/- per day instead of notional income at Rs.15,000/- per annum and ought to have granted interest at 12% per annum instead of 9%, and therefore, sought to grant the balance amount of Rs.66,000/-.

11. Heard Sri N. Subba Rao, learned counsel for the petitioner (appellant).

12. Despite service of notice, none appears for respondent No.1, owner of the auto-rickshaw involved in the accident, and no representation for the insurer (respondent No.2).

13. Perused the order under challenge and the evidence available on record.

14(a) It is clear from Ex.A-3, certified copy of wound certificate, and also the evidence of PW.2 that the petitioner sustained fracture of pelvis and both bones of hips. Even the evidence of PW.2 also shows that PW.1 sustained fracture of *pubic rami* on both sides and was admitted in University General Hospital, Vijayawada, where he was treated as in-patient for ten (10) days i.e. from 15.10.2003 to 24.10.2003. So far as percentage of permanent disability is concerned, there is absolutely no error committed by the Tribunal since it has arrived at percentage of the disability in relation to the entire body but not the pelvis alone, as such, the said finding recorded

by the Tribunal is maintained.

(b) Concerning income of the petitioner, the Tribunal has taken his notional income at Rs.15,000/- per annum. Petitioner claims that he was earning Rs.100/- per day by doing welding work, and, therefore, Rs.3,000/- per month be taken as his income. But, to prove the same, nothing is forthcoming except Ex.A-6, an attested copy of provisional national trade certificate, showing that the petitioner was a skilled worker. Hence, considering Ex.A-6, it can be said that the petitioner must be earning Rs.2,000/- per month; which works out to Rs.24,000/- per annum. Further, the Tribunal has rightly taken the age of the petitioner as 36 years as per Ex.A-6 certificate referred to above. In view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**^[1], the relevant multiplier for the age group of the petitioner is '15'. When the annual income of the petitioner is capitalized with multiplier '15', it comes to Rs.3,60,000/- (Rs.24,000/- x 15) and 10% thereof comes to Rs.36,000/- (Rs.3,60,000/- x 10%) towards loss of permanent disability.

(c) The Tribunal has granted Rs.5,000/- towards medical expenses as against Rs.6,741-95 paise shown in the medical bills marked as Exs.A-5 to A-11. No reasons were assigned as to why the said amount was reduced to

Rs.5,000/-. Hence, the amount of Rs.6,741-95 paise, as shown in the medical bills, is granted rounding it to Rs.6,742/- as against Rs.5,000/- granted by the Tribunal.

(d) Since the petitioner was treated as in-patient for ten (10) days, as observed above, a sum of Rs.15,000/- is granted towards pain and suffering, Rs.5,000/- towards extra-nourishment, Rs.2,000/- towards transportation charges and Rs.6,000/- towards loss of temporary earnings for a period of three (3) months at Rs.2,000/- per month.

15. Thus, the petitioner is entitled to a total compensation of Rs.70,742/- (Rupees seventy thousand and seven hundred and forty two only) as against Rs.34,000/- awarded by the Tribunal, and the same is accordingly awarded. However, the petitioner is entitled to interest at 9% per annum on the compensation granted by the Tribunal, but, on the enhanced compensation at 7.5% per annum, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others** ^[2], from the date of petition till realisation.

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 11, 2016.
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[\[1\]](#) (2009) 6 SCC 121
[\[2\]](#) 2013ACJ1403 = 2013(4)ALT35