THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1235 OF 2005

JUDGMENT:

The instant appeal is preferred by respondent No.2 – Insurance Company in O.P.No.672 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal, Warangal, aggrieved by the order and decree, dated 10.05.2004, passed in the said O.P., whereby and whereunder, the Tribunal has awarded a sum of Rs.3,00,000/- as compensation as claimed by the petitioner for the injuries sustained by him in a road accident, on the ground that the compensation awarded by the Tribunal was arbitrary and excessive.

2. The appellant – insurer is respondent No.2, whereas respondent No.1 is the petitioner, respondent No.2, who is the owner of the offending vehicle, is respondent No.1 and respondent No.3, which is also the same insurer, but represented by Divisional Manager of different districts, is respondent No.3 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 would show that on 10.01.2003 at about 04:00 PM, while the petitioner was returning from Jangaon

to Warangal on a Suzuki motor cycle, an Auto bearing registration No.AP-36-V-4894 driven at high speed in a rash and negligent manner coming in opposite direction on wrong side hit the motor cycle, due to which, the petitioner fell down and sustained injuries. The petitioner, claiming that he was aged 40 years and working as pharmacist earning Rs.5,000/- per month, sought a sum of Rs.3,00,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988.

5. Before the Tribunal, respondent No.1 remained *ex parte,* whereas respondent Nos.2 and 3, who are one and the same Company represented by Divisional Managers of different districts i.e., Hyderabad and Warangal, opposed the claim.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues. During enquiry, petitioner besides examining himself as PW.1, examined one Dr. V. Ashok as PW.2 and marked Exs.A1 to A13 to substantiate the claim laid. On behalf of respondent Nos.2 and 3, no witnesses were examined, but a copy of the policy was marked as Ex.B1.

7. The Tribunal, on issue No.1, found it in favour of the petitioner. On issue No.2, the Tribunal, believing the version of the petitioner that he was a pharmacist, as

there is evidence to show the same, taken the earnings of the petitioner at Rs.5,000/- per month or Rs.60,000/- per annum and basing on the evidence of PW.2, having taken the functional disability at 30%, by applying multiplier '13' arrived at the loss of earning capacity as Rs.2,34,000/- and awarded the same towards continuing and permanent disability. Besides the same, the Tribunal has granted Rs.15,000/- towards actual loss of earnings, Rs.57,853/- towards medical expenses and extra nourishment, Rs.2,000/- towards transportation and damages to clothing and Rs.40,000/- towards pain and suffering, shock and mental agony, thus, totalling to a sum of Rs.3,48,853/-, but has restricted the same to Rs.3,00,000/- as the claim was laid only for Rs.3,00,000/-, and granted interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has taken the monthly income at Rs.5,000/- without any proof or basis and the disability at 30% was not a permanent disability as PW.2 fairly stated that the disability was not permanent in nature and therefore, sought to set aside the order and decree under challenge.

9. Heard Sri Naresh Byrapaneni, learned counsel for the appellant and Sri Alladi Ravinder, learned counsel for respondent No.1. Though respondent Nos.2 and 3 were

served with notice, none appears.

10. Perused the evidence of PW.2, who has treated the petitioner. According to him, PW.1 was originally admitted on 11.01.2003 and discharged on 13.01.2003 for treatment of open fracture tibia right leg and he was again admitted on 08.01.2004 for bone grafting, as the fracture was not united and discharged on 12.01.2004. His evidence also shows that the petitioner sustained 30% functional disability. When he was suggested in cross-examination that the petitioner can walk without the assistance of a stick, he bluntly denied the same and even denied the suggestion that PW.1 was not having 30% disability.

11. Learned counsel for the appellant would contend that since the disability was functional in nature, it cannot be construed as permanent disability and therefore, the Tribunal went wrong in treating it as partial permanent disability. No doubt, it is true the expression 'functional disability' is occurring in the evidence. Even otherwise, in view of the denial by PW.2 of the very suggestion that the petitioner can walk without the aid of a stick, certainly, the disability shall have to be construed as a continuing disability. In that view of the matter, the finding recorded by the Tribunal cannot be interfered with. Now, coming to whether the quantum of compensation granted by the Tribunal is just and adequate, when the petitioner was a

pharmacist, which is borne out by the record, certainly, it cannot be disputed that he was able to earn Rs.5,000/- per month. Therefore, the amount of Rs.3,00,000/- granted by the Tribunal, certainly, cannot be construed as on higher side or excessive, as the Tribunal has restricted the claim to Rs.3,00,000/- despite arriving at Rs.3,48,853/- .

12. Concerning the rate of interest, the Tribunal has granted interest at 9% per annum. However, the same is reduced to 7.5% per annum in view of the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**[1].

13. Accordingly, the appeal is allowed in part only to the extent of reducing the rate of interest and the order and decree under challenge are confirmed in all other aspects. 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.

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A. SHANKAR

NARAYANA, J

April 19, 2016.
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[1] (2013) 9 SCC 54