

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.144 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.20,780/- (Rupees twenty thousand seven hundred and eighty) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, Kurnool, for the injuries sustained by the petitioner, by order, dated 08-01-2004, in M.V.O.P. No.193 of 2002 as against the claim of Rs.1,30,000/- (Rupees one lakh and thirty thousand) laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioner seeking enhancement.

2. The appellant herein is the petitioner in M.V.O.P. before the Tribunal, while respondent Nos.1 and 2 herein, who are owner and insurer of motor cycle bearing registration No.AP 21C 6589, respectively, are Respondent Nos.1 and 2, respectively.

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

4. The facts would show that on 17-12-2000 at about 9.15 a.m., the petitioner was returning from Mosque on his scooter bearing registration No. AP 21E 4106 to his mutton shop located near Nethaji theatre, Kurnool, during which time, a motor cycle bearing registration No.AP 21C 6589 driven at high speed in rash and negligent manner came and hit the petitioner's vehicle, due to which, he fell down and received injuries.

i) The petitioner claims that he was treated as in-patient for 40 days and spent Rs.20,000/- towards medical expenses. He was earning Rs.2,000/- per month by working as clerk under Yaquat Ali, Kurnool.

ii) His case is also that he sustained permanent disability and, therefore, sought a sum of Rs.1,30,000/- towards compensation.

5. Respondent No.1, owner of the motor cycle, remained *ex parte*.

6. Respondent No.2, its insurer, opposed the claim raising various pleas.

7. On the basis of pleadings, the Tribunal has framed three issues about the responsibility for the accident.

8. During inquiry, the petitioner, besides examining himself as PW.1, has examined one Dr. B. Chandranna as PW.2, and marked Exs.A-1 to A-5. On behalf of respondent No.2, no witnesses were examined, but copy of insurance policy was marked as Ex.B-1 on consent.

9. The Tribunal on appraisal of evidence on record held issue No.1 in favour of the petitioner holding that due to rash and negligent driving of the motor cyclist, the accident had occurred. On issue No.2, the Tribunal basing on entries in Ex.A-4, wound certificate, showing that the petitioner sustained i) lacerated wound 4 cm. x 1/2 cm. back of left ring finger; ii) pain over mandible; and iii) lacerated wound on left leg 2 cm. x 1 cm. x skin deep and nature of injuries as opined by Dr.T. Kiran Kumar, who was not

examined, to the effect that injury Nos.1 and 2, which were simple in nature and injury No.3, which was grievous in nature and also basing on the evidence of PW.2, Dr.B. Chandranna, Professor of Orthopedics in Government General Hospital, Kurnool, and finding from his evidence that there was mal-union of left tibia, the Tribunal considered 5% disability. The Tribunal by taking into consideration that the petitioner would have earned Rs.50/- per day based on G.O.Ms.No.117 Finance (PC.III) Department, dated 04-07-2003 and also placing reliance on the decision of this Court in **P. Eswari Balarajaiah & others v. Md. Riyas and another**^[1], fixed at Rs.50/- per day as the earnings and taken 5% disability, worked out at Rs.2,625/- towards temporary loss of earning capacity for 35 months [Rs.75/- x 35]. Thereafter, the Tribunal has applied multiplier '17.95' in working out future loss of earning capacity and arrived at Rs.16,155/-. Besides the same, the Tribunal has also granted Rs.2,000/- towards medical expenses and, thus, granted a total sum of Rs.20,780/- towards compensation with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement of compensation contending in the grounds that the Tribunal has not properly appreciated the evidence on record and overlooked the fact that the petitioner was earning Rs.3,000/- per month and granted only Rs.2,000/- towards medical expenses when the petitioner received fracture injury and treated as in-patient for 40 days and ought to have granted Rs.20,000/- towards treatment and, thus, sought to grant balance amount.

11. Heard Sri A. Jaya Sankara Reddy, learned counsel for the appellant – petitioner and Sri N. Mohan Krishna, learned Standing Counsel for respondent No.2 – Insurance Company. The cause title itself shows that respondent No.1 is not a necessary party in this appeal.

12. Perused the order and the evidence, both, oral and documentary.

13. Admittedly, the doctor, who issued medical certificate, is not examined, but one Dr.B. Chandranna, working in the same hospital, was examined as PW.2, who has spoken about the disability, and according to the learned counsel for the petitioner, PW.2 has opined that the petitioner sustained 10% disability, but the Tribunal has taken 5% disability as against 10% without assigning any reasons. As seen from material placed, no disability certificate is forthcoming either issued by PW.2 or from Medical Board. Even otherwise, the fact that the Tribunal has considered the disability and worked out the loss of earning capacity holding that the petitioner sustained partial permanent disability cannot be interfered. Hence, that finding recorded by the Tribunal is upheld. However, while recording the finding, the Tribunal has not assigned any reasons as to why 5% disability was considered which suffers from improper reasoning and, therefore, disability is taken at 10%, but, however, earnings of the petitioner fixed by the Tribunal is not disturbed. The relevant multiplier for the age group of persons between 21 and 25 years is '18' as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[2]. In that view of the matter, when worked out the loss of earning

capacity with reference to 10% disability, the petitioner is entitled Rs.32,400/- as against Rs.16,155/- granted by the Tribunal.

14. Concerning temporary loss of earnings at Rs.2,265/- granted by the Tribunal, the same is confirmed. The Tribunal awarded Rs.2,000/- towards medical expenses and the same is also confirmed. Towards pain and suffering, the Tribunal has not granted any amount. Keeping in view, the fact that the petitioner had undergone treatment for 40 days as inpatient, a sum of Rs.15,000/- is granted. Towards extra nourishment, a sum of Rs.5,000/- is granted. Towards attendant charges, a sum of Rs.3,000/- is granted. Towards transport charges, a sum of Rs.1000/- is granted. Thus, in all, the petitioner is entitled to a sum of Rs.61,025/- as against Rs.20,780/- granted by the Tribunal.

15. Concerning rate of interest, the Tribunal has granted the same at 9% per annum, and the same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.40,245/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others** [\[3\]](#).

16. In the result, the appeal is allowed in part, and the order and decree, dated 08-01-2004, in M.V.O.P. No.193 of 2002, passed by the Tribunal, are modified, enhancing the compensation to Rs.61,025/- (Rupees sixty one thousand and twenty five) from Rs.20,780/- with interest at the rate of 9% per annum on the amount of Rs.20,780/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.40,245/- (Rupees

forty thousand two hundred and forty five) from the date of petition. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

January 06, 2016.

Mgr

[\[1\]](#) . [2003 (3) Law Summary 55 (DB)]
[\[2\]](#) . (2009) 6 Supreme Court Cases 121
[\[3\]](#) . 2013 ACJ 1403