

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1293 of 2009

JUDGMENT:

Dissatisfied with the award of Rs.2,28,000/- as compensation by the order and decree, dated 31.05.2007, in M.V.O.P.No.446 of 2005 passed by the Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District and Sessions Judge (Fast Track Court), Nizamabad (for short 'the Tribunal'), as against the claim of Rs.5,00,000/- laid under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act'), the petitioner in the said O.P. preferred the instant appeal under Section 173 of the Act, seeking enhancement of compensation on the ground that the amount awarded by the Tribunal with interest at 8% per annum *pendente lite* and 6% per annum post decree, is very meager compared to the sufferance, the petitioner, who was six years old, experienced on account of the accident.

2. The appellant is petitioner, while respondent Nos.1 & 2, who are the owner and the insurer of the tanker bearing registration No.TN 38 A 4232, were respondent Nos.1 & 2, respectively, in the original petition.

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

4. The facts would show that on 23.02.2005, at about 8.15 p.m., while the petitioner, aged 6 years as on that day, was standing on the left side of the road margin at Purushothapatnam Center, Chilkaluripet, awaiting school bus to board, a tanker bearing registration No. TN 38 A 4232, coming from Chennai driven in a rash and negligent manner, dashed her and ran over her left leg, which was completely crushed. She was immediately shifted to Ramineni Nursing Home, Chilakaluripet, and then shifted to Amaravathi Medical Institute of Sciences Private Limited at Guntur, where she has undergone treatment and was thrice admitted and discharged for surgical interventions time and again. Ultimately, she lost five fingers of her left foot and insensitivity to the left foot and skin grafting was also done. According to the petitioner, represented by her father as next friend, she lost academic year, bright future and better marriage opportunities, besides spending huge amount towards treatment and purchase of medicines, and even requires money for future treatment, and thereby, sought Rs.5,00,000/- from respondent Nos.1 and 2, who are the owner and the insurer of the tanker, respectively.

5. Before the Tribunal, respondent No.1 remained *ex parte*.

6. Respondent No.2 opposed the claim by filing a detailed counter, raising various pleas.

7. The Tribunal, basing on the said pleadings, framed three issues in order to determine the liability as well as the compensation, to which the petitioner is entitled.

8. The father of the petitioner examined himself as P.W.1, besides examining Dr.S.Amarnath as P.W.2, and marked Exs.A1 to A11, besides marking three case sheets as Ex.X1 through P.W.2. On behalf of respondent No.2 – Insurance Company, no witnesses were examined and no documents were marked.

9. The Tribunal has recorded a finding in favour of the petitioner on issue No.1, on analyzing the evidence on record.

10. So far as issue No.2 is concerned, the Tribunal, basing on the evidence of P.W.2, the Medical Officer, and the documentary evidence Exs.A4 to A11 and Ex.X1 and also considering the fact that all the five fingers of left leg of the petitioner were amputated, granted Rs.25,000/- towards grievous injury, Rs.85,000/- towards medical expenses, attendant charges, transportation and extra-nourishment. The Tribunal has taken the partial permanent disability, as assessed by P.W.2, at 40%, and notional income at Rs.15,000/- per annum provided in Schedule-II to Section 163-A of the Act, since the claim was laid under Section 163-A of the Act, and by applying multiplier '17', arrived at Rs.1,02,000/- towards loss of earnings. Besides the

same, the Tribunal has granted Rs.15,000/- towards further surgical procedure and, thus, granted a total sum of Rs.2,27,000/- as compensation with interest as mentioned above.

11. The aforesaid order and decree are under challenge in the instant appeal, contending that the entire amount of Rs.1,20,000/- spent by the petitioner towards medical expenses ought to have been granted by the Tribunal. It is stated that the Tribunal, some how, overlooked the fact that the petitioner lost her marriage prospects on account of amputation of all the five fingers of her left leg, as she could walk only with the help of belt shoe, and ought to have taken the earnings at a higher level, rather than confining to the notional income, and therefore, sought to grant the balance amount.

12. Heard Sri Sricharan Telaprolu, learned counsel for the appellant. Though, the service was completed on the owner and insurer, respondent Nos.1 and 2, respectively, none appears for them.

13. The only question that arises for consideration is whether the compensation determined by the Tribunal is fair and adequate, or the petitioner is entitled to enhancement as requested?

14. As could be seen from the order under challenge and evidence on record, more particularly, the evidence of P.W.2, the petitioner sustained injuries as shown in first case sheet in Ex.X1. At

the time of admission in Amaravathi Institute of Medical Sciences Hospital, Kothapet, Guntur, multiple surgical procedures resorted to in the Hospital relate to debridment, cross leg flap and glutial thigh flap. As seen from Ex.X1, in the first instance, the petitioner was admitted on 11.03.2005 and again she was admitted on 15.03.2005 and discharged on 26.03.2005 and for the third time, admitted on 14.04.2005 and discharged on 19.04.2005. The evidence of the Medical Officer would show that the petitioner has lost all the five toes on account of the crush injury. According to him, back of the ankle and the sole of the foot of the petitioner became insensitive and she cannot participate in physical activities and will have permanent instability of the foot as it does not possess sensation. In fact, she requires further surgical procedures to restore some function to her foot and estimated the disability between 35% and 40%.

15. It is no doubt true, the claim is laid under Section 163-A of the Act. But, however, a sum of Rs.85,000/- was granted by the Tribunal towards medical expenses, attendant charges, transportation and extra-nourishment, though, the expenditure is approximately around Rs.1,20,000/-, as could be gathered from Ex.A4 – bunch of 105 medical bills for Rs.85,170/- and Ex.A9 – room rent receipt for Rs.3,600/- and, certainly, it can be enhanced to Rs.1,00,000/- and the same is, accordingly, enhanced. Towards extra-nourishment, a sum of

Rs.25,000/- is granted. Towards attendant charges, the petitioner would have required a considerable amount, keeping in view, the instability. Therefore, a sum of Rs.10,000/- is granted towards attendant charges, though, it is difficult to assess, keeping in view, the latitude of the period she suffered without assistance.

16. The Tribunal applied multiplier '17', taking the age of the father of the petitioner as 35 years, on the ground that the mother's age was not available, but, it is not a death case where the age of the parents, which hitherto, being considered. No multiplier factor is fixed for the age group of the petitioner, who was 6 years old, in the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**¹. However, in the Schedule-II to Section 163-A of the Act, the multiplier factor provided is '15', which, of course, is applicable to the petitioner, as the claim is laid under Section 163-A of the Act. Therefore, the amount of Rs.1,02,000/- granted by the Tribunal towards loss of earnings, is confirmed. Towards surgical procedure, a sum of Rs.15,000/- is granted by the Tribunal and the same is enhanced to Rs.30,000/-. Keeping in view, the inconvenience the petitioner has to face towards marriage prospects and loss of certain amenities in life, a

¹ (2009) 6 Supreme Court Cases 121

sum of Rs.25,000/- each is granted under this head, though, it may not adequately compensate.

17. Thus, the petitioner is entitled to a total sum of Rs.3,17,000/-, as against Rs.2,27,000/- granted by the Tribunal, and the same is accordingly granted. The Tribunal has granted varied interest i.e., 8% per annum *pendente lite*, while 6% per annum post decree. In view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**², interest at 7.5% per annum is granted on the total amount of Rs.3,17,000/- from the date of petition till realization, as against varied interest granted by the Tribunal.

18. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation and modifying the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

19. Miscellaneous petitions, if any pending in the instant appeal, shall stand closed.

JUSTICE A.SHANKAR NARAYANA

08.08.2016

v v

² 2013 ACJ 1403