

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A. No.1301 OF 2009**

**JUDGMENT:**

The present Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') is preferred by respondent No.2, New India Assurance Company Limited, by its Divisional Manager, Kurnool, aggrieved by the order and decree, dated 11-07-2007, in M.V.O.P. No.319 of 2004, whereby and whereunder, an amount of Rs.1,84,000/- was granted towards compensation with interest at 8.5% per annum, by the learned Chairman, Motor Accidents Claims Tribunal - cum - V Additional District Judge, Nandyal (for short 'Tribunal'), for the injuries sustained by respondent No.1 - petitioner (claimant), who laid claim under Section 166 of the Act, mainly on the ground that the quantum of compensation granted by the Tribunal is excessive and arbitrary.

2. The appellant herein, which is insurer of the tractor-trailer bearing Nos.AP-21-A-8708 and 8709 that involved in the accident, is respondent No.2 in the M.V.O.P. before the Tribunal, while respondent No.1 is petitioner and respondent No.2, who is owner of the tractor-trailer, is respondent No.1.

3. For the sake of convenience, the parties are

hereinafter referred to as arrayed in the M.V.O.P. before the Tribunal.

4. The petitioner, in fact, sought Rs.3,00,000/- under Section 166 of the Act for the injuries he sustained on 20.07.2003 at about 2.45 p.m., near Pathapadu Village bus stand on Banaganapalli - Yaganti road, while he was proceeding on a scooter to Nandyal from yaganti, a tractor along with its trailer bearing Nos.AP-21-A-8708 and 8709 came from behind, driven in a rash and negligent manner dashed the scooter from rear side, resulting in injuries to both of them. According to the petitioner, he was shifted to a private hospital in Nandyal and from there to Apollo Hospital, Hyderabad, where he has undergone treatment as inpatient for twenty (20) days by undergoing surgical interventions to the left leg below knee and bone grafting and plating of both condyles of left tibia besides undergoing plastic surgery to the left ankle portion and, thus, spent about Rs.1,18,000/- towards medical expenses. Stating that he was 35 years old and on account of injury sustained by him, he became permanently disabled, sought the aforesaid sum as compensation.

5. Respondent No.1, owner of the tractor-trailer that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the tractor-trailer, filed counter opposing the claim.

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 besides examining himself as PW.1, examined an eye-witness to the accident as PW.2 and the doctor who treated him as PW.3 through Advocate Commissioner and marked Exs.A-1 to A-10 besides Ex.X-1 - case sheet. On behalf of the insurer, Manager of the Branch concerned was examined as RW.1 and marked Exs.B-1 and B-2, copy of the insurance policy and driving licence, respectively, of the tractor-trailer that involved in the accident.

9. The Tribunal recorded a finding favouring the petitioner on issue No.1.

10. On issue No.2, the Tribunal assessed the liability of respondent Nos.1 and 2 and held that both the respondents are liable to pay compensation of Rs.1,84,000/- with interest at 7.5% per annum thereon jointly and severally, but, however, the Tribunal fixed liability on respondent No.1 and directed respondent No.2 to pay initially and then to recover from respondent No.1, owner of the vehicle.

11. It is the aforesaid order which is under challenge in the instant appeal preferred by the respondent No.2 - Insurance Company contending in the grounds of appeal that the Tribunal went wrong in taking the income of the petitioner and also granting the amounts towards medical expenses and that the amount granted by the Tribunal is excessive and, therefore, sought to dismiss the claim petition against it.

12. Heard Sri B. Devanand, learned standing counsel for the appellant - respondent No.2, and Sri Nuthalapati Krishna Murthy, learned counsel for respondent No.1 – petitioner. Despite service of notice on respondent No.2 herein, none appears for him.

13. Perused the order and the material on record, both, oral and documentary.

14. So far as determination of compensation is concerned, the Tribunal has taken the age of the petitioner as 42 years falling in the age group of persons between 40 and 45 years and taken the multiplier factor '15' basing on the table provided in II Schedule to Section 163-A of the Act and earnings at Rs.2,000/- per month and the disability at 10% by recording the reasons therefor and applying multiplier '15' arrived at Rs.36,000/- towards partial permanent disability. That finding recorded by the Tribunal cannot be upset since it is well reasoned and

based on appreciation of evidence.

15. The Tribunal has also granted Rs.30,000/- towards pain and suffering. Though, it looks on higher side, still, the fact that the Tribunal has not granted any amount towards certain other heads, such as extra nourishment, attendant charges, transport charges and temporary loss of earnings, it also does not warrant any interference.

16. The amount of Rs.1,18,000/- granted by the Tribunal towards medical, attendant and other expenses is based on the bills and the Tribunal has elaborately discussed as to how the said amount was arrived at. In that direction, the Tribunal has taken the aid of Ex.A-6, which itself would show Rs.1,16,010/- which is an essentiality certificate testified by PW.3 and even Exs.A-6, A-7, A-9 and A-10, besides Ex.X-1. Therefore, it cannot be said that the finding recorded by the Tribunal granting Rs.1,18,000/- towards medical, attendant and other expenses is without there-being any legally acceptable evidence. Hence, absolutely there is no merit in the instant appeal.

17. Even concerning the rate of interest awarded by the Tribunal at 7.5% per annum, the same cannot be faulted in view of pronouncement of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and**

others<sup>[1]</sup>.

18. In the result, the appeal is dismissed confirming the order and decree, dated 11-07-2007, in M.V.O.P. No.319 of 2004, passed by the Tribunal, in all respects including the direction given by the Tribunal to respondent No.2 - Insurance Company in MVOP to deposit initially and recover the same from the owner of the vehicle, as there is no challenge in regard to that aspect of the case by any of the respondents. There shall be no order as to costs.

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

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**A. SHANKAR NARAYANA, J**

**July 29, 2016.**  
PV/Mgr

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[\[1\]](#). 2013 ACJ 1403