

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.2708 OF 2004

JUDGMENT:

Dissatisfied with the Award of Rs.1,61,105/- towards compensation as against the claim of Rs.6,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the petitioner/claimant preferred the present Appeal under Section 173 of the Act.

2. The learned Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge at Nalgonda (for short, 'the Tribunal'), by his order and decree, dated 4.4.2003, on appreciation of evidence of the petitioners i.e., P.W.1 – M.J. Philips (Injured) and the Medical Officer, examined as P.W.2, and the documentary evidence i.e., Exs.A1 to A15 arrived partial permanent disability at 40% as the Left Arm of the petitioner was affected with paraplegia while disagreeing with the claim of the petitioner that he suffered paralysis to the left portion of his entire person. That finding was recorded based on the evidence of P.W.2 – Medical Officer and the documentary evidence through Exs.A4, A5 and A12. The learned Chairman having found that the petitioner was reimbursed to the tune of Rs.60,000/- against the amount of Rs.1,09,778/- spent towards hospital expenses, awarded the balance amount of Rs.49,778/- under the head 'Medical Expenses'. The learned Chairman has also awarded Rs.8,000/- towards 'Transportation Charges, Attendant

Expenses and Extra-Nourishment Charges', etc. Partial Permanent Disability of 40% construed by the learned Chairman was also based on the evidence of P.W.2 and the learned Chairman instead of adopting the structural formula for determining loss of earning capacity for the reason that the petitioner did not loose his job adopted the methodology of awarding Rs.1,000/- for each percentage opining that it would serve the ends of justice for compensating the petitioner on account of partial permanent disablement and, accordingly, granted a sum of Rs.40,000/-.

3. The learned Chairman referred to leave availed by the petitioner based on Ex.A10-Leave sanction proceedings issued by Mandal Parishad, Z.P., Nalgonda, and arrived at that the petitioner availed 69 days of leave as he sought for Half Pay Leave for 138 days i.e., three months 9 days and basing on Ex.A11-Original Salary Certificate contents, which reflected that the petitioner was drawing salary of Rs.11,109/- per month towards leave period. Thus, the total compensation of Rs.1,61,105/- was granted by the learned Chairman with interest at 9% p.a. thereon from the date of petition till realization.

4. Having dissatisfied with the Award of Rs.1,61,105/-, the present appeal is preferred agitating in the Grounds of Appeal that the learned Chairman, somehow, overlooked the factum of petitioner's suffering total paralysis to his Left Arm, having accepted disability at 40%, ought to have awarded compensation by application of structural

formula. The reasoning adopted by the Tribunal that he did not lose his job and not entitled for higher compensation is no ground to fix Rs.1,000/- per month for each percentage. Therefore, on these grounds, the appellant/claimant sought to grant balance amount.

5. Heard Sri M. Madhava Reddy, learned counsel for the appellant and Sri N.S. Bhaskara Rao, learned counsel for the respondent.

6. Now, the short question that arises for consideration is whether the compensation awarded by the Tribunal is just and adequate, if not, to what amount the appellant is entitled?

7. There cannot be any dispute in regard to the fact situation occurring in the present case for the reason that the Insurance Company has not preferred any appeal. So far as the first component is concerned, an amount of Rs.49,778/-, which is the balance amount after deducting reimbursed amount of Rs.60,000/- from the total amount of Rs.1,09,778/- spent by the petitioner is concerned, the same does not require interference, and, therefore, the same is maintained.

8. The amount of Rs.8,000/- granted by the Tribunal towards Transportation Charges, Attendant Expenses and Extra-Nourishment Charges, certainly, appears to be on lower side. It is not in dispute that the petitioner was treated as In-patient for a considerable period as Ex.A-14 shows that the petitioner was admitted

on 29.6.2002 and discharged on 18.7.2002 i.e., for about 20 days he was treated as In-patient and treatment was given and the injuries sustained by the petitioner have been mentioned in Ex.A-14. Therefore, towards 'Extra-nourishment Charges' the petitioner is entitled to a sum of Rs.15,000/- and the amount of Rs.8,000/- granted by the Tribunal can be construed as the amount towards 'Transportation Charges and Attendant Expenses'. Thus, the appellant/claimant is entitled to Rs.23,000/- as against Rs.8,000/- towards 'Transportation Charges, Attendant Expenses and Extra-Nourishment Charges'.

9. Turning to the percentage adopted by the Tribunal at the rate of Rs.1,000/- and awarding Rs.40,000/- is concerned, it is no doubt true that the petitioner did not lose his job, but the fact that the petitioner has to bear with the said disability of losing his left hand activity permanently throughout the rest of his life ought to have been considered by the Tribunal. Therefore, keeping in view the disfiguration that had occasioned on account of losing left hand completely, on account of paraplegia of entire left arm, an amount of Rs.40,000/- granted by the Tribunal can be enhanced to Rs.1,00,000/-, and, accordingly, it is enhanced. The Tribunal has adopted Rs.11,109/- as monthly earnings basing on Ex.A-11 and granted a sum of Rs.33,327/- for a period of 3 months 9 days, but, somehow, it appears that the amount of Rs.33,327/- would account for 3 months, leaving 9 days salary. Therefore, the said amount is enhanced to

Rs.37,000/- from Rs.33,327/-. The Tribunal has not granted any amount towards 'pain and suffering', and so a sum of Rs.25,000/- is granted towards 'pain and suffering'. Thus, the petitioner is totally entitled to Rs.2,34,778/-, which is rounded off to Rs.2,35,000/- (Rupees Two Lakhs and Thirty five thousand only).

10. In the result, the Appeal is partly allowed enhancing the compensation from Rs.1,61,105/- (Rupees One lakh Sixty one thousand one hundred and five only) to Rs.2,35,000/- (Rupees Two lakhs and thirty five thousand only) against the respondents 1 and 2. The rate of interest at 9% p.a. granted by the Tribunal on Rs.1,61,105/- shall be maintained and the enhanced amount of Rs.73,895/- shall carry interest at the rate of 7.5% p.a., from the date of claim petition till realization keeping in view, the ruling in **Rajesh v. Rajbir Singh**¹. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA,J

Dt. 03.10.2017
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¹ (2013) 9 Supreme Court Cases 54