

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3660 OF 2004

JUDGMENT:

Seeking enhancement of compensation, the present Civil Miscellaneous Appeal is preferred by the petitioner in M.O.P. No.638 of 1994, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Visakhapatnam (for short 'Tribunal') under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), having dissatisfied with the award of Rs.27,000/- granted by the Tribunal by his order and decree, dated 09.01.1997 in the aforesaid M.O.P., mainly on the ground that the amount awarded was very meager and would not meet the just compensation as mandated by the provisions under the Act.

2. The appellant herein is the petitioner in M.O.P. No.638 of 1994, while respondent Nos.1 to 3, who are driver, owner and insurer of Oil Tanker Lorry bearing No.AP16U 2403, respectively, are arrayed as such.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid MOP before the Tribunal.

4. Heard Sri M. Kesava Rao, learned counsel for the appellant - petitioner, and Sri R. Venkat Rao, learned standing counsel for respondent No.3 - Insurer, though service was completed on respondent No.2, none appears for him. Against respondent No.1, the

present appeal is dismissed by order, dated 08.02.2016. He is only a driver of the Oil Tanker which was accident vehicle and since he remained *ex parte* and no decree was passed against him, his presence is not necessary.

5. The order would show under issue No.4 in paragraph No.14 that respondent No.3 - Insurer alone was directed to deposit the amount of Rs.27,000/-, thus, the owner is left out. However, the Insurance Company has not come forward preferring any appeal questioning the order on the ground that the liability is not cast on the owner and, therefore, no liability can be fastened on it.

6. Now, a short point that arises for consideration is, whether the petitioner is entitled to any enhancement?

7. The petitioner laid the claim for Rs.75,000/- for the injuries he sustained. He sustained fracture of femur right, intramedullary nail was done as per the evidence of PW.2 and he was discharged on 29.06.1994. There is evidence to show that intra nailing was done and there was deformity present associated with limping. These all facts were taken into consideration by the Tribunal and awarded Rs.2,000/- towards medical expenses; Rs.5,000/- towards pain and suffering and Rs.20,000/- towards continuing or permanent disability.

8. Admittedly, the petitioner was 20 years old on the date of accident and prosecuting the studies. The details of study, which he was prosecuting is not projected. But, the fact that he was admitted in

A.M.G. Hospital for a period of two weeks as per Ex.A-3 and he underwent surgical interventions as mentioned in the above cannot be disputed. Therefore, keeping in view, the fact that he met with an accident and suffered fracture to his right thigh bone which would have caused inconvenience during the time of healing, the amount of Rs.20,000/- granted towards continuing or permanent disability is enhanced to Rs.50,000/-. The amounts of Rs.2,000/- and Rs.5,000/- granted by the Tribunal towards medical expenses and pain and suffering are maintained. A sum of Rs.3,000/- is granted towards extra nourishment. Thus, a total sum of Rs.60,000/- is granted as against Rs.27,000/- awarded by the Tribunal.

9. Concerning the rate of interest, the Tribunal has granted the same at 12% per annum, which is not disturbed on the amount awarded by the Tribunal. However, interest at 7.5% per annum is awarded on the enhanced amount from the date of petition till the date of realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

10. In the result, the appeal is allowed in part, and the order and decree, dated 09-01-1997, in M.O.P. No.638 of 1994, passed by the Tribunal, are modified, enhancing the compensation to Rs.60,000/- (Rupees sixty thousand) from Rs.27,000/- with interest at the rate of 12% per annum on the amount of Rs.27,000/- granted by

¹. 2013 ACJ 1403

the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.33,000/- (Rupees thirty three thousand) from the date of petition till the date of realization, and in all other respects, the order and decree is confirmed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

A. SHANKAR NARAYANA, J

September 11, 2017

Mgr

