

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1458 OF 2004

JUDGMENT:

Assailing the order, dated 23.01.2004, in M.V.O.P. No.517 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Srikakulam (for short 'Tribunal'), whereby and where-under, a sum of Rs.2,47,000/- was awarded with interest at 9% per annum thereon as against the claim of Rs.3.00 lakh laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act'), the present appeal is preferred under Section 173 of the Act by the erstwhile Andhra Pradesh State Road Transport Corporation, on the ground that the Tribunal ought not to have taken the disability certificate issued by PW.2, who is incompetent to issue as he does not belong to the Medical Board, and the Tribunal thereby went wrong in awarding higher compensation, which is excessive.

2. Respondent No.2 and the appellant herein, who are driver and owner of Bus bearing registration No.AP 9Z 7554, are respondent Nos.1 and 2, respectively, in the aforesaid M.V.O.P., while respondent No.1 is the petitioner.

3. For the sake of convenience, the parties hereinafter referred to as they were originally arrayed in the aforesaid MVO.P.

4. Heard Sri S.V. Ramana, learned Standing Counsel for the appellant - Corporation, and Sri P. Varaprasada Rao, learned counsel

for respondent No.1 - Petitioner. It is mentioned in the cause title of Memorandum of Grounds of Appeal that respondent No.2 is not a necessary party.

5. The learned standing counsel insisted that the Tribunal ought not to have taken the disability certificate issued by PW.2 on the ground that he has not treated the petitioner - injured at any time, and that apart, the petitioner was only a student prosecuting the Intermediate, he was non-earning member and, therefore, the Tribunal ought not to have assessed the loss of earning capacity taking the annual income as Rs.15,000/-.

6. Perused the order passed by the Tribunal and the finding recorded. It is not in dispute that the petitioner sustained fractures to his right upper arm and pelvic bone. The evidence of PWs.3 and 4, who were examined on commission by the Advocate Commissioner, is to the effect that there has been malunion of fractures. The injured was taken to the hospital at Berhampur and he had undergone surgical interventions having undergone treatment as in-patient for three months in M.K.C.G. Hospital. The Tribunal has taken 60% disability and arrived at Rs.2,16,180/- rounding it off to Rs.2,16,000/-. Besides the same, the Tribunal has also granted Rs.16,000/- towards medical bills and Rs.15,000/- towards pain and suffering, thus, making a total of Rs.2,47,000/- with interest at 9% per annum thereon.

7. When kept in view, the evidence of PWs.2 and 3 and malunion of fractures sustained by the petitioner at a young age where he was prosecuting Intermediate and also keeping in view the dislocation of studies, certainly, the disability accepted by the Tribunal cannot be faulted. Therefore, affirming the amount awarded by the Tribunal towards compensation and reducing the rate of interest to that of 7.5% per annum from 9% per annum awarded by the Tribunal in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

8. The present appeal is, accordingly, allowed in part to the extent indicated in the above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

August 31, 2017.

Mgr

¹. 2013 ACJ 1403