

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2850 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, is preferred by the claimant seeking enhancement of compensation dissatisfied with the award of Rs.15,700/- towards compensation granted by the learned Chairman, Motor Accidents Claims Tribunal - cum - Additional District Judge, Vizianagaram, by the order and decree dated 19.07.2000, in O.P. No.749 of 1998, as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, for the injuries sustained by him in a road accident.

2. Heard Sri Jayanti S.C. Sekhar, learned counsel for the appellant - petitioner, and perused the material on record.

3. No representation for respondent No.3 viz., Oriental Insurance Company Limited, insurer of the lorry bearing No.AP-31-T-6166 that involved in the accident.

4. The appeal against respondent Nos.1 and 2, who are driver and owner of the lorry, was dismissed for default on 08.02.2016, but, they had already suffered decree having been set *ex parte* before the Tribunal. Hence, the said dismissal order would not have any effect on adjudicating upon the request herein.

5. The fact-situation need not be adverted to for the reason that the appeal is preferred by the petitioner and not by the insurance company.

6. The petitioner, initially, was taken to King George Hospital, Visakhapatnam, and treated as in-patient for three weeks and thereafter, he underwent treatment under Dr. Reddi and he claims to have spent Rs.15,000/- towards medical expenses. Injuries sustained by the petitioner were fracture of radius and ulna, left femur and the medical officer opined that the said injury is grievous in nature and assessed the disability at 25% and issued Ex.A-6 disability certificate. However, the Tribunal did not agree with the same on the ground that a private medical practitioner has issued it and not a competent Medical Board, and, therefore, fixed the permanent disability at 10% only. The Tribunal has taken the daily wage of the petitioner at Rs.40/- or Rs.1,200/- per month or Rs.14,400/- per annum. The age of the petitioner is taken as 60 years, in view of the inconsistent age shown at two different places, as at one place in the petition his age is shown as 50 years and in the medical record, it is shown as 65. The Tribunal, by applying multiplier factor '5', arrived at the permanent disability as Rs.7,200/- (Rs.14,400/- x 5 x 10%). Towards extra-nourishment, the Tribunal has granted Rs.2,500/-; Rs.1,000/- towards transportation and medical expenses, Rs.5,000/- towards pain and suffering and, thus granted a total sum of Rs.15,100/- towards compensation with interest at 12% per annum.

7. When kept in view that the petitioner has sustained grievous injuries and was treated for three weeks as in-patient, certainly, he is entitled to more than the amount that was granted by the Tribunal. Even taking the age of the petitioner as 60 years and the daily wage at Rs.60/- instead of 40/-, the annual income would come to Rs.21,600/- and 10% thereof would work out to Rs.2160/-. For a person aged 60 years, the relevant multiplier is '9' as per the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**¹, and, thus, the loss of earning capacity would work out to Rs.19,440/-. Since there are no medical bills, no amount can be awarded towards medical expenses as rightly observed by the Tribunal though, the claim was made for Rs.5,000/-.

8. The amount of Rs.2,500/- awarded towards extra-nourishment is enhanced to Rs.5,000/-. The amount of Rs.1,000/- awarded towards transportation and medicines is maintained. The amount of Rs.5,000/- awarded towards pain and suffering is enhanced to Rs.10,000/- as claimed by the petitioner.

9. Thus, the petitioner is entitled to a total sum of Rs.32,940/- (Rupees thirty two thousand nine hundred and forty only) as against Rs.15,700/- awarded by the Tribunal, and the same is accordingly granted. However, the rate of interest at 12% per annum is maintained on the amount of Rs.15,700/- granted by the Tribunal, but, on the enhanced amount of Rs.17,240/-, interest is granted at 7.5% per

¹ (2009) 6 SCC 121 SC - DB

annum in view of the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**² from the date of petition till realisation.

10. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

September 12, 2017.
PV

A. SHANKAR NARAYANA, J

² 2013 ACJ 1403 (SC) (F)B

