

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.260 of 2014

JUDGMENT:

The present Appeal is preferred questioning the liability cast on the Oriental Insurance Company Limited, which is figuring as 2nd respondent in M.V.O.P.No.641 of 2008, by order dated 10.2.2011, passed by the Chairman, Motor Accidents Claims Tribunal-cum-First Additional District Judge, Kadapa, to pay a sum of 2,00,000/- (Rupees Two Lakhs only) for the injuries sustained by the petitioner/claimant in a motor vehicle road accident.

2. Heard Ms. B.L. Prasuna, learned counsel for the appellant-Insurer and Sri D. Kodandarami Reddy, learned counsel for the 1st respondent.

3. Though, the learned counsel for the appellant places reliance in **Raj Kumar v. Ajay Kumar**¹ concerning the percentage of disability occurring in the present case was 35%, which is partial permanent in nature, spoken to by P.W.3 – Dr. C. Sanjeevaiah, who was no other than one of the Members of Medical Board duly constituted and issued the certificate on physical examination of the petitioner/1st respondent. The learned counsel referring to permanent functional disability taken at 35% and loss of future earning capacity as 35% would submit that still, in the present case nothing is forthcoming in the cross-examination of P.W.3 that the disability

¹ (2011) 1 SCC 343

assessed by the Medical Board was without proper basis. That apart, there is also noting in the cross-examination of P.W.3 that the petitioner was suffering with the disability to the tune of 35%. In fact, the evidence of P.W.3 would clearly show that the injury was malunited communicated subtrochanteric fracture of right femur with implant inside, Osteoporosis of the surrounding bones of right hip, restricted movements of right hip, difficulty in squatting and cross-leg and difficulty to stand with affected limb, and these observations made the Board to arrive at 35% of partial permanent disability and thereby issued Ex.A7 – Physical Disability Certificate. In such an event, certainly, the amount restricted to Rs.2,00,000/- by the Tribunal cannot be construed as having been granted exorbitantly. The finding recorded by the Tribunal is based on proper appreciation of evidence on record, more particularly, the medical evidence occurring on record through P.Ws.2 and 3. Even the medical bills examined by the Tribunal, in regard to one or two it commented that there was no name mentioned, but it was a bunch of slips, first document of medical slip which was issued by Vaidya Vidhana Parishad, the Tribunal made a comment, which was not in accordance with the evidentiary rule, and did not properly examine the continuity of bills by taking into consideration the dates of issue of these bills.

4. One more reason to arrive at the conclusion that there is no merit in the present appeal, is that the Tribunal, basing on the disability, applied structural formula, fixing the income at Rs.5,500/-

per month, which is a finding recorded on facts, which the appellant unable to convince on what ground it can be viewed as excessive and having arrived at Rs.3,92,700/- which it determined as the compensation to which the petitioner was entitled, it still restricted to Rs.2,00,000/- as the claim made was only to the extent of Rs.2,00,000/- by the petitioner/claimant.

5. Though the Tribunal refers to the law laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**² but, had the Tribunal was keen enough in regard to the principles laid down by the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh & others**³ **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**⁴ and **Rajesh and others v. Rajbir Singh and others**⁵, the Tribunal would have granted Rs.3,92,700/-, as the amount awarded under the provisions of the Act i.e., just and adequate compensation, which the Tribunal completely lost sight of.

6. Therefore, there is no merit in the present Appeal and the same is dismissed. 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. 10.10.2017
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² 2009 ACJ 1298 (SC)

³ AIR 2003 SC 674

⁴ 2012 ACJ 191 (SC)

⁵ 2013ACJ1403 = 2013(4)ALT35