

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.449 of 2014

JUDGMENT:

The learned Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Srikakulam, by his Order dt. 19.10.2011 in M.V.O.P.No.45 of 2009, where claim was laid under Section 166 of the Motor Vehicles Act (for short 'the M.V.Act), for award of compensation of Rs.3,00,000/- with interest at 24% p.a., awarded compensation of Rs.97,500/- with interest at 12% p.a., fixing joint and several liability on respondent Nos. 1 and 2 in the OP. Questioning the same, Respondent No.2-the National Insurance Company Limited, in O.P.No.45 of 2009 preferred the present appeal under Section 173 of the M.V.Act.

02. Though Notice to respondent Nos. 1 and 2 served, none of them have entered appearance.

03. Sri Ravishankar Jandhyala, learned Standing Counsel for the Appellant, would submit that the Tribunal disbelieved the evidence of Pw.2-Medical Officer both with regard to the partial and permanent disability certified by him at 50% and also the amputation spoken to by Pw.1 to his right foot, but however, though the bills under Ex.A.6 would reflect the amount of Rs.6,217/-, it granted Rs.10,000/- in excess of the medical bills under Ex.A.6, and also granted five months income towards loss of temporary earnings though the evidence on

record shows that the claimant was treated for two months as inpatient and therefore on this count also, the amount requires to be reduced.

04. It is also his contention that the Tribunal ought to have granted 10% disability when the Tribunal expressed the view that Pw.2's evidence cannot be believed as regards 50% disability spoken to by him and Ex.A.5 contents. It appears, there is some force in the argument of the learned counsel for the petitioner, but the fact that the claimant undergone treatment as inpatient for two months would reflect an amount of Rs.10,000/- granted by the Tribunal towards medical expenses, though Ex.A.6 would reflect Rs.6,217/-, cannot be considered as excessive.

05. Turning to five months loss of temporary earnings, the Tribunal computed it at Rs.15,000/- taking into consideration Rs.3000/- per month as earnings. No doubt true that the petitioner was treated for two months as inpatient but to attain normalcy to attend to his profession or avocation, certainly the period of five months would have taken and that was the reason the Tribunal awarded loss of temporary earnings computing for a period of five months rather than for two months. In that regard also, there is no merit in the submission made by the learned Standing Counsel.

06. However, so far as multiplier factor '17' applied by the Tribunal is concerned, since the age of petitioner was 32 years on the date of accident, it ought to be '16', but not '17', as per the multiplier

factor determined by the Hon'ble Apex Court in *Smt.Sarla Varma v. Delhi Transport Corporation*¹.

07. Therefore, only to the extent of applying the multiplier factor '16', the request of the learned Standing Counsel can be considered. When multiplier factor '16' is applied in place of '17' taking 10 % disability on the annual income of Rs.25,000/-, the loss of earning capacity would work out to $\text{Rs.25,000/-} \times 16 \times 10/100 = \text{Rs.40,000/-}$.

08. Concerning the rate of interest, the Tribunal awarded the same at 9% p.a. from the date of petition till the date of realization with a direction to pay the awarded amount with interest within three months or within 30 days from the date of receipt of certified copy of decree, whichever is earlier, failing which, the interest shall carry at 12% p.a. on the aggregate of principal and interest. But, the same is reduced to 7.5% p.a. on the compensation now determined as referred in the above from the date of petition till the date of realization in view of the decision of Hon'ble Apex Court in *Rajesh v. Rajbir Singh*².

09. Accordingly, this Appeal is allowed in part to the extent as indicated above. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

October 25, 2017
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¹ 2009 ACJ 1298 (SC)

² 2013 ACJ 1403 (SC)

