

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.418 OF 2014

JUDGMENT:

The present appeal is preferred by the petitioner - injured in O.P. No.436 of 2008, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - XVII Additional Chief Judge - cum - III Additional Metropolitan Sessions Judge, Hyderabad (for short 'Tribunal'), whereby and where-under, the Tribunal awarded a sum of Rs.78,900/- as compensation as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act'), aggrieved over the order and decree, dated 13.04.2010, passed by the Tribunal in the aforesaid OP.

2. The appellant herein is the petitioner in the aforesaid O.P., while respondent Nos.1 and 2, who are owner and insurer of Car (Chevrolet Tavera) bearing registration No.AP 13K 9000, respectively, are arrayed as respondents as such.

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

4. The petitioner sustained injuries in a road accident occurred on 22.01.2007 at about 22.15 hours, while he was proceeding on his LML Vespa and when reached opposite Spencer's market at Tolichowi, when the aforesaid Car came in opposite direction and hit

his Scooter, due to which, he sustained grievous injuries and incurred expenditure. Therefore, he laid a claim for award of Rs.5,00,000/- with interest at 18% per annum thereon.

5. Before the Tribunal, owner of the Car remained *ex parte*.

6. The Insurer, who is respondent No.2, raised various pleas and resisted the claim requesting to dismiss the claim petition.

7. The Tribunal having framed three issues to fix the responsibility for the accident, examined PWs.1 and 2, amongst whom, PW.2 is the Orthopaedic Doctor, who was Senior Resident in Orthopaedic Hospital, Hyderabad, and marked Exs.A-1 to A-6, besides marking Ex.B-1, a true copy of insurance policy on consent and Exs.C-1 and C-2, which are case sheet and authorization letter authorizing PW.2 to depose as a witness in Court.

8. The Tribunal on an analysis, taking the monthly earnings of the petitioner as Rs.1500/-, age as 22 years and the disability of 15% and applying the multiplier factor '17', worked out the loss of earning capacity at Rs.45,900/-. Besides the same, the Tribunal also awarded certain amounts under relevant heads, such as transportation charges, extra nourishment, loss of temporary earnings and pain and suffering and, thus, a total sum of Rs.78,900/- was awarded as compensation. The Tribunal also awarded interest at 7.5% per annum thereon.

9. On the ground that the compensation awarded by the Tribunal is meager and not just and adequate compensation, the present appeal is preferred by the petitioner to grant balance amount.

10. Heard Sri V. Atchuta Ram, learned counsel for the appellant - petitioner, and Sri Ramchandra Reddy Gadi, learned standing counsel for respondent No.2 - Insurer. Though, service was completed on respondent No.1, owner of the vehicle, he has not entered appearance. In fact, he remained *ex parte* even before the Tribunal. Therefore, his absence is of any consequence.

11. Now, the short point that arises for consideration is, whether the appellant - petitioner is entitled to enhancement of compensation, or whether the compensation awarded by the Tribunal is just and adequate?

12. Though, the learned standing counsel, initially, submitted that there is no material to show that the petitioner was immediately treated as the discharge summary of Owaisi Hospital, Hyderabad, would show that the petitioner was admitted as could be seen from the evidence of PW.2 in the said hospital on 30.01.2007 though, the accident took place on 22.01.2007. But, that argument would not sustain for the reason that the petitioner also exhibited the FIR as Ex.A-1, injury certificate as Ex.A-3 issued by Osmania General Hospital, Hyderabad, presupposing that he was immediately sent to

Osmania General Hospital after the accident. The Tribunal, of course, somehow, did not advert to the treatment given at Osmania General Hospital while looking at Ex.A-2, charge sheet.

13. Now, turning to the amount determined by the Tribunal, the Tribunal has taken Rs.1500/- per month as the income of the petitioner. The learned counsel for the appellant - petitioner would submit that the petitioner was drawing Rs.5,000/- per month, but no proof is placed before the Tribunal. Even, at this stage, there is nothing on record to show that the petitioner was drawing a salary of Rs.5,000/-. But, the fact that the petitioner was making sweets and working in a Sweet Shop is not in dispute. The very fact that while he was driving the LML Vespa Scooter, he met with an accident, would indicate that the petitioner was not that poor. In such an event, as per the line of judgments of the Hon'ble Supreme Court, where even a coolie has to be construed as earning Rs.3,000/- per month, the same is applied, treating the monthly earnings as Rs.3,000/- in place of Rs.1500/- fixed by the Tribunal. When the loss of earning capacity is construed taking into account 15% of partial and permanent disability, the amount of Rs.45,900/- would have to be doubled and, thus, the petitioner is entitled to Rs.91,800/- as against Rs.45,900/-. The other amounts awarded by the Tribunal are maintained. Thus, the petitioner is totally entitled to Rs.1,24,800/- as compensation as against the amount of Rs.78,900/-.

14. Concerning the rate of interest, the Tribunal awarded the same at 7.5% per annum, which is in tune with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**¹ and, therefore, the same is maintained on the enhanced amount even.

15. In the result is, the appeal is allowed in part and the order and decree, dated 13.04.2010 passed by the Tribunal in O.P. No.436 of 2008 are modified enhancing the compensation to Rs.1,24,800/- (Rupees one lakh twenty four thousand and eight hundred) from Rs.78,900/- with interest at the rate of 7.5% per annum thereon from the date of petition till realization. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

October 25, 2017.

Mgr

¹. (2013) 9 SCC 54