

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.4071 of 2004

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the petitioner/claimant seeking enhancement of compensation as he was dissatisfied with the award dated 13.8.2004 in M.V.O.P.No.75 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum- I-Additional District Judge, Chittoor, for Rs.1,15,000/- as against the claim he laid for Rs.3,00,000/- for the injuries he sustained in a road accident. The claim was admittedly laid under Section 166 of the Act.

2. Heard Sri J.M. Naidu, the learned counsel for the appellant. So far as the 1st respondent is concerned, appeal was dismissed on 13.4.2016, but the said dismissal is of no consequence in view of the fact that the 1st respondent, owner of the vehicle, remained *ex parte* before the Tribunal and suffered decree with joint and several liability to pay the compensation determined by the tribunal and also in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹. 2nd respondent entered appearance.

3. The learned counsel would submit that the petitioner sustained as many as five fractures and permanent disability to the

¹ 2001(1) ALT 495 (D.B.)

tune of 70% assessed under Ex.A5, but the Tribunal overlooked the said percentage and opined that the permanent disability would be 25%, and even in regard to the income the tribunal has fixed at Rs.1,000/- per month though, there has been evidence to show that the petitioner was earning Rs.2,500/- per month. The learned counsel would submit that P.W.4 was the employer, he paid salaries to the petitioner and his evidence would reflect that the petitioner was being paid Rs.2,500/- per month.

4. Now, the short point that arises for consideration is whether the compensation awarded by the Tribunal is just, adequate, if not, what quantum is entitled.

5. It is not in dispute that the petitioner sustained five fractures, which are clearly spoken to by P.W.2 and P.W.3, who are the medical officers. Their evidence would show that the petitioner sustained the following injuries as per Ex.A2.

“ (1) A lacerated injury 6 cm x 2 cm x 6 cm deep above the Rt. Outer lateral)

(2) A lacerated injury in the middle of Rt. great toe.

(3) Abrasion 10 cm x 8 cm on anterior aspect of Rt. shoulder.

(4) Abrasion 10 cm x 8 cm on posterior aspect of Rt. forearm.

(5) Multiple abrasions of various sizes on Rt. hand.

(6) Abrasion 1 cm x 1 cm on Rt. outer canthus

X- Ray No.2276/9-6-98: Fracture of outer (lateral) malleolus, fracture of proximal phalanx of great toe and fracture of displacement of middle phalanx of little toe (Rt.)

Subluxation of right acromio-clavicular joint.

I am of the opinion that the injury Nos.1, 2 and 3 are grievous in nature might have been caused in a road traffic accident of below one hour duration.

Sd/
25.7.1998.”

6. As regards the age of the petitioner, 32 years taken by the tribunal cannot be faulted, but, however, in regard to the income at Rs.1,000/- per month taken by the Tribunal appears to be on lower side. Therefore, viewing that even in the year 1998 Flour Mill Operator would be earning Rs.2,000/- per month, when percentage of disability at 25% is taken as against 70% disability shown in Ex.A11 was only due to right upper limb, loss of earning capacity when computed applying the multiplier factor '16', it would work out to,

$$24,000 \times 16 \times \frac{25}{100} = \text{Rs.96,000/-}.$$

7. Thus, the petitioner is entitled to Rs.96,000/- towards loss of earning capacity. The amount granted towards pain and suffering at Rs.25,000/- at the rate of Rs.5,000/- per fracture by the tribunal is enhanced to Rs.10,000/- per fracture keeping in view, the suffering undergone by the petitioner during treatment and thus it is enhanced to Rs.50,000/- (Rs.10,000 x 5) as against Rs.25,000/-; for the three simple injuries the tribunal awarded at Rs.3,000/- at the rate of Rs.1,000/- per injury, which is enhanced to Rs.3,000/- per injury and thus, enhanced to Rs.9,000/- (Rs.3,000/- x 3); for treatment and medicines the tribunal awarded Rs.2,000/-, the same is confirmed in the absence of any medical evidence except two X-rays and three

prescriptions; towards transport, attendant charges and other miscellaneous expenses the Tribunal awarded Rs.1,000/-. The same is enhanced to Rs.15,000/- keeping in view, the attendant charges for a period of at least six months was required; towards extra nourishment no amount is granted and, therefore, a sum of Rs.10,000/- is granted.

8. In the result, the Appeal is partly allowed by enhancing the compensation from Rs.1,15,000/- (Rupees One lakh and fifteen thousand only) to Rs.1,82,000/- (Rupees One lakh and eighty two thousand only) against the respondents 1 and 2. The rate of interest at 9% p.a. granted by the tribunal on Rs.1,15,000/- is maintained and the enhanced amount of Rs.67,000/- shall carry interest at the rate of 7.5% p.a., from the date of claim petition till realization keeping in view, the ruling in **Rajesh v. Rajbir Singh**². 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. 28.08.2017

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² (2013) 9 Supreme Court Cases 54