

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A.No.3046 OF 2004

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), seeking enhancement of compensation on the ground that the compensation of Rs.85,764/- awarded by the Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge, Chittoor at Tirupati, by order, dated 30.01.2004, in M.V.O.P.No.205 of 2001, is very meagre, as the claim made under Section 166 of the Act was Rs.3,50,000/-.

2. There is no dispute in regard to the fact situation as to how the appellant - petitioner sustained injuries and the treatment he had undergone.

3. Heard Sri M.P. Chandramouli, learned counsel for the appellant, and Sri Kota Subba Rao, learned Standing Counsel for respondent No.2.

4. According to the appellant, respondent Nos.3 and 4 are not necessary parties and the same was endorsed in the cause title.

5. The present appeal was dismissed against respondent No.1 for default on 13.04.2016, but, however, the said dismissal order would not make any difference in adjudicating upon the request made

herein in view of the ruling of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹.

6. Now, the short question that arises for consideration is whether the compensation amount determined by the Tribunal is just and adequate?

7. The Tribunal, while discussing the income of the appellant – petitioner, in view of the variation between the plea and proof, as PW.3 - employer of PW.1 has stated in his affidavit that he was paying Rs.1,000/- per month and batta at Rs.30/- per day to the appellant, whereas the Salary Certificate issued by him shows that he was paying Rs.1,500/- per month as salary and Rs.50/- per day as batta, discarded both and fixed the income of the appellant at Rs.1,000/- per month or Rs.12,000/- per annum and by accepting 30% partial permanent disability, applying multiplier 16, taking the age of the appellant as 18 years, arrived at Rs.57,600/- towards loss of earning capacity on account of partial permanent disability.

8. Though, the Tribunal has taken Rs.1,000/- per month as the income of the appellant, it has not assigned any cogent reason as to why it has not taken Rs.1,500/- per month. In the sense, whether the Tribunal was looking at Minimum Wages Act and arrived at the income of Rs.12,000/- per annum? Merely because there was discrepancy or variation between the entry in the Salary Certificate

¹ 2001 (1) ALT 495 (D.B.)

and the assertion made by PW.3, certainly, the amount of Rs.1,500/- per month spoken to by PW.3, as the amount of salary paid by him to the appellant, cannot be disbelieved, when nothing is brought out in the cross-examination of PW.3 to show that the appellant did not work under him and he did not pay that much amount. Thus, when the salary of the appellant is taken as Rs.1,500/- per month or Rs.18,000/- per annum, 30% thereof would work out to Rs.5,400/-. Thus, by applying multiplier 18, the petitioner is entitled to Rs.97,200/- towards loss of earning capacity on account of 30% partial permanent disability.

9. The Tribunal has granted Rs.7,664/- towards transport charges taking into consideration that the petitioner was shifted from SVRR GG Hospital, Tirupati, to Government General Hospital, Chennai, while not agreeing with the petitioner that he has spent Rs.15,000/- towards transportation. The same is maintained. The Tribunal has granted Rs.5,000/- towards extra nourishment, medical bills and attendant charges, as against the claim of Rs.40,000/-, on the ground that only Ex.A5 was filed for Rs.3,502.50 ps. But, the said amount appears to be on lower side when examined in the light of the injuries sustained by the petitioner, which are i) contusion along the right lateral border of chest and lower third of the entire lateral wall of the abdomen, ii) fracture of both bones on the left leg, compound injury, iii) contusion left ankle joint and iv) multiple abrasions over the dorsum of foot and toes. Certainly, the petitioner is entitled to

Rs.10,000/- towards extra nourishment and Rs.6,000/- towards attendant charges, besides Rs.3,000/- towards medical bills. The Tribunal has awarded an amount of Rs.500/- towards damage to clothing, as against the claim of Rs.5,000/-. The same is maintained. The Tribunal has awarded an amount of Rs.15,000/- towards pain and suffering. The same is maintained. Thus, the petitioner is entitled to Rs.1,39,364/- towards compensation and hence, the same is awarded.

10. The Tribunal has awarded interest at the rate of 9% per annum. The same is maintained on the compensation amount of Rs.85,764/- awarded by the Tribunal. On the enhanced amount, the appellant is awarded interest at 7.5% per annum, as per the ruling in **Rajesh and others v. Rajbir Singh and others**².

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

A. SHANKAR NARAYANA, J

August 30, 2017.
MD

² (2013) 9 SCC 54