

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.1391 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') seeking enhancement of compensation having got dissatisfied with the amount of Rs.99,000/-, awarded for the injuries sustained by the petitioner in a road accident, as against the claim of Rs.2,24,000/- laid under Section 166 (1) (a) of the Motor Vehicles Act, 1988.

2. Heard Sri V. Ramchandar Rao, learned counsel for the appellant. Though, a chance was afforded to the 3rd respondent – The New India Assurance Company Limited, there is no representation for the 3rd respondent. The appeal is dismissed for default against the respondents 1 and 2 vide Court Orders, dated 29.1.2011 and 14.7.2016 respectively, but the said dismissal is of no consequence in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹.

3. There cannot be any dispute in regard to the fact situation occurring in the instant case as well as the liability fixed on the respondents 2 and 3, who are the owner and the insurer respectively, by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar, by order dated 18.12.2003 in O.P.No.201 of 2002.

¹ 2001(1) ALT 495 (D.B.)

4. The Tribunal, in fact, framed three issues and on appraisal of evidence through P.Ws.2 and 3 and on appreciation of the documentary evidence Exs.A1 to A11 let in by the petitioner, awarded the said amount. On behalf of the 3rd respondent-Insurance Company, no witnesses were examined and no documents were marked.

5. The Orthopedic Surgeon, who was examined as P.W.2, would assert that the petitioner sustained fracture of shaft of right humerus, fracture of both bones, and fracture of right lower end of femur. His evidence also shows that the petitioner has undergone surgical intervention for all the fracture injuries, plates and screws were placed, advising bed rest for three months, and the petitioner was discharged from the Hospital on 18.5.2001 and he was admitted in his (P.W.2's) Nursing Home on 29.4.2001. His evidence further shows that a sum of Rs.6,000/- was required for undergoing future operation for removal of implants. Yet another Orthopedic Surgeon (P.W.3) was examined to prove Ex.A9-Disability Certificate, dated 15.11.2003 showing 50% partial permanent disability said to have suffered by the petitioner on account of malunion of both bones of right forearm and difficulty in squatting and shortening of right lower limb by 1½". Relevant documents have been marked through the witnesses.

6. The Tribunal has granted a sum of Rs.40,000/- under the head 'pain and suffering' for the injuries and a sum of Rs.16,582/- towards 'medical expenses' covered by bunch of bills, marked as Ex.A5. P.W.4, who is the Sub-Editor in Charcha News Paper, is

examined to prove that the petitioner was drawing a salary of Rs.3,000/- per month, but on the ground that the petitioner did not choose to examine the employer, the Tribunal fixed his income at Rs.2,000/- per month and awarded Rs.12,000/- towards 'loss of temporary earnings'. Concerning permanent disability, the Tribunal discarded the evidence of P.W.3 on the ground that the said disability would not affect the income of the petitioner, and, therefore, a lumpsum amount of Rs.30,000/- was granted. Thus, in all, a sum of Rs.98,582/- was granted as compensation, which is rounded off to Rs.99,000/-. The rate of interest at 9% p.a. was awarded on the said amount from the date of petition till realization.

7. The fact that the petitioner sustained fracture injuries as mentioned in the above and shortening of right lower limb by 1½” is borne out from the record and proved through the evidence of P.Ws.2 and 3. In such an event, for the injuries, including pain and suffering, a sum of Rs.40,000/- appears to be on lower side and, therefore, the same is enhanced to Rs.60,000/-. The amount of Rs.16,582/- awarded by the Tribunal towards 'medical expenses' is maintained. Even an amount of Rs.6,000/- granted by the Tribunal is also maintained towards future operation. An amount of Rs.12,000/- was granted towards 'pain and suffering' by the Tribunal, basing on the Doctors' evidence. But, the same requires enhancement as there is shortening of right lower limb by 1½” and it is difficult for the petitioner to get normalcy within six months and, therefore, at least it

would have taken one year and, hence, the same is enhanced to Rs.24,000/- from Rs.12,000/-.

8. Touching the disability, when the Tribunal has considered 50% disability, ought to have resorted to structural formula and ought to have determined loss of earning capacity. Tribunal appears to have accepted the evidence of P.W.3, but, however, a lumpsum amount of Rs.40,000/- is granted by the Tribunal towards partial permanent disability taking lesser percentage. There was no indication except the evidence of P.W.3, who stated that 50% disability sustained by P.W.1. The details are not occurring in Ex.A9 as to on what basis P.W.3 arrived at 50% disability, but it cannot be disputed the shortening of right lower limb by 1½” has been occurring and the petitioner has to suffer with disability throughout his life.

9. When kept in view, the shortening of right lower limb to the extent of 1½”, Rs.30,000/- granted by the Tribunal, towards loss of future amenities, needs enhancement. Therefore, the same is enhanced to Rs.90,000/-. The Tribunal has not awarded any amount towards extra nourishment, a sum of Rs.10,000/- is granted towards extra nourishment; towards attendant charges a sum of Rs.9,000/- is granted at the rate of Rs.1,500/- per month. Towards transportation charges a sum of Rs.5,000/- is awarded. Thus, in all, the petitioner/claimant is entitled to Rs.2,20,582/- which is rounded off to Rs.2,21,000/-.

10. In the result, the Appeal is partly allowed enhancing the compensation from Rs.99,000/- (Rupees Ninety nine thousand only) to Rs.2,21,000/- (Rupees Two lakhs and twenty one thousand only) against the respondents 2 and 3. The rate of interest at 9% p.a. granted by the tribunal on Rs.99,000/- is maintained and on the enhanced amount of Rs.1,22,000/- interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization keeping in view, the ruling in **Rajesh v. Rajbir Singh**² is awarded. 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

14th September, 2017
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² (2013) 9 Supreme Court Cases 54