

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.4245 of 2004

JUDGMENT:

Heard Sri T.S. Rayalu, learned counsel for the appellant and Sri B. Devanand, learned Standing Counsel for the 2nd respondent-Insurance Company. Though the 1st respondent, who is the owner of the vehicle, served he has not entered appearance.

2. The present Appeal is to enhance compensation on the ground that the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-X Additional District Judge (Fast Track Court), Guntur (for short, 'the Tribunal') in M.V.O.P. No. 217 of 2003 by order dated 3.7.2004 has not properly appreciated the evidence of medical officer and the documentary evidence, strangely fixing Rs.15,000/- as annual earnings and the Tribunal has also not awarded any amounts under any other heads. Therefore, the petitioner-appellant sought to grant the balance amount of Rs.74,000/- as the claim was only Rs.1,00,000/-, against which an amount of Rs.26,000/- was granted.

3. Learned Standing Counsel for the 2nd respondent-Insurance Company would support the order.

4. Perused the order and the material available on record.

5. It is clear from the evidence of P.W.2, who treated P.W.1 (petitioner-claimant) initially as In-patient from 28.1.2003 and discharged on 1.2.2003 and again he was admitted on 2.7.2003 and

operated on 25.7.2003 and he was discharged on 4.8.2003. Ex.X1 and Ex.A3 which are the certified copies of Case Sheet and Wound Certificate would clearly show as to what was spoken to by P.W.2 to the effect that the petitioner sustained superior fracture of pelvis, which is grievous in nature, and in the process there was urethral rupture and that was the reason why the petitioner was admitted as In-patient and undergone surgical interventions. P.W.2 assessed the disability at 20%, which the Tribunal accepted. However, it is found that the Tribunal fixed the income at Rs.15,000/- per annum on the ground that no documentary proof is filed to show that the petitioner was earning Rs.150/- per day. The Tribunal has taken the age of the petitioner as 56 years, applied the multiplier '8' as per the Schedule-II of Section 163-A of the Motor Vehicles Act. But, the fact is that Rs.15,000/- per annum is taken though, the accident occurred in the year 2003. Even a coolie, according to the decisional law, would be earning Rs.30,000/- per annum during the years 2003 or 2004 as per the pronouncements of the Supreme Court, and, therefore, viewing that the petitioner was earning Rs.30,000/- per annum, taking the disability as 20% and the multiplier factor '11' as per the table formulated by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**¹, when calculated, the loss of disability would work out to Rs.66,000/- (i.e., $\text{Rs.30,000} \times 11 \times 20/100 = \text{Rs.66,000/-}$). While maintaining the amount of Rs.2,000/- granted by the Tribunal towards 'medical expenses', a sum of Rs.10,000/- is

¹ 2009 ACJ 1298 (SC)

granted towards 'pain and suffering' and a sum of Rs.2,000/- is granted towards 'extra nourishment', and, thus, the petitioner-appellant is totally entitled to Rs.80,000/-.

6. In the result, the appeal is partly allowed enhancing the compensation from Rs.26,000/- (Rupees Twenty six thousand only) to Rs.80,000/- (Rupees Eighty thousand only). The rate of interest awarded at 9% p.a. on Rs.26,000/- is maintained and on the enhanced amount of Rs.54,000/- interest at the rate of 7.5% per annum is awarded keeping in view of decision in **Rajesh v. Rajbir**. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in these Civil Miscellaneous Appeals shall stand closed.

Dt. 13.10.2017
gbs

A. SHANKAR NARAYANA

