

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2619 of 2004

JUDGMENT:

Dissatisfied with the award of Rs.2,88,000/- granted as compensation by order, dated 17.01.2002, in O.P.No.873 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal'), as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 for the injuries sustained by the petitioner in a road accident, the present appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

The appellant herein is the petitioner, whereas respondent Nos.1 and 2 herein are respondent Nos.1 and 2, respectively, in the aforesaid O.P.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

There cannot be any dispute so far as the fact-situation is concerned, the treatment undergone by the petitioner for the injuries sustained by him and the disability he sustained, as no appeal is preferred by the insurer.

Heard Sri J.Prabhakar, learned counsel for the appellant. No representation for respondent No.2 – insurer. So far as respondent No.1 is concerned, the present appeal stood dismissed against him by

order dated 08.02.2016, but the said dismissal order is of no consequence in deciding the present appeal in view of the judgment rendered by a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, as respondent No.1 remained *ex parte* before the Tribunal and suffered decree.

Under issue No.2, the Tribunal found that there are fractures to the left leg, right leg, right hand and injury to the right side face of the petitioner, who initially took treatment in Osmania General Hospital and later in Owaisi Hospital. The evidence of the Medical Officer examined as PW.3 was discussed by the Tribunal elaborately. The Tribunal, however, did not agree with the evidence of PW.3 as to 70% permanent disability spoken to by him on the main ground that no certificate to that effect was issued by him. Therefore, taking the age of the petitioner as 22 years, permanent disability at 40% and the income of the petitioner at Rs.2,000/- per month, as against the stand of the petitioner that he was earning Rs.6,000/- per month by running computer business for want of documentary proof, arrived at Rs.1,72,800/- rounded it off to Rs.1,73,000/- towards loss of earning capacity with 40% disability. Besides the same, the Tribunal granted a sum of Rs.25,000/- towards pain and suffering, Rs.75,000/- towards past and future medical expenses and Rs.15,000/- towards incidental expenses such as transport, extra-nourishment and attendant charges. In all, the Tribunal awarded a sum of Rs.2,88,000/- as compensation.

¹ 2001(1) ALT 495 (D.B.)

Aggrieved over the same, the petitioner preferred the present appeal seeking the balance amount.

Admittedly, no document is filed to show that the petitioner was running computer business as contended by him. Therefore, it is difficult to accept that the petitioner was earning Rs.6,000/- per month. However, since the accident took place in the year 1998, instead of Rs.24,000/- per annum, it can be viewed that he was earning Rs.30,000/- per annum. As per the pronouncements of the Hon'ble Supreme Court, the income of a labourer can be assessed at Rs.30,000/- per annum approximately. Therefore, when Rs.30,000/- is taken as annual income of the petitioner, the loss of earning capacity would work out to Rs.2,16,000/- (Rs.30,000 x 40% x 18). The other amounts granted by the Tribunal i.e., Rs.25,000/- towards pain and suffering, Rs.75,000/- towards past and future medical expenses and Rs.15,000/- towards incidental expenses such as transportation, extra-nourishment and attendant charges, are maintained.

Thus, the petitioner is entitled to a total sum of Rs.3,31,000/- as against Rs.2,88,000/- awarded by the Tribunal, towards compensation and the same is, accordingly, granted.

So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount of Rs.2,88,000/- granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till

realisation as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**².

Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the instant appeal, stand disposed of.

28.08.2017
v v



JUSTICE A.SHANKAR NARAYANA

² 2013 ACJ 1403