HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.4384 OF 2004

JUDGMENT:

Heard Ms. A. Vijetha, learned counsel, for Sri D. Kodandarami Reddy, learned counsel for the appellant - petitioner, and Sri C. Prakash Reddy, learned standing counsel for respondent No.2 - M/s. New India Assurance Company Limited. No representation for respondent No.1, owner of the vehicle.

2. The appellant herein is the petitioner in M.V.O.P. No.464 of 2001, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Cuddapah (for short 'Tribunal'), while respondent Nos.1 and 2, who are owner and insurer of the Auto-rickshaw bearing registration No.AP 02-T 7113, respectively, are arrayed as respondents as such.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the aforesaid M.V.O.P.

4. The manner, in which the accident did occur leading to the injuries sustained by the petitioner is not in dispute. The Tribunal, in fact, finding that the petitioner sustained partial permanent disability of 10%, taking the income of Rs.15,000/- per annum, applying multiplier factor '17', arrived at Rs.25,500/- towards loss of future earning capacity and granted Rs.4,500/- towards medical expenses,

pain and suffering and, thus, a sum of Rs.30,000/- was granted by the Tribunal. But, however, it has exonerated respondent No.2 - Insurer on the ground that the driver of the auto-rickshaw belonging to respondent No.1 did not possess valid subsisting driving license to drive the auto-rickshaw, and possessing a non-transport license would not be a mitigating factor to fasten liability on the Insurance Company, and thereby dismissed the appeal against respondent No.2, directing respondent No.1 alone to pay the compensation.

5. The said findings are now questioned in the present appeal raising relevant grounds seeking enhancement also as the claim was laid for award of Rs.1,50,000/-.

6. The petitioner sustained fracture of right thigh, undergone surgical intervention and implants were inserted. The Tribunal, though, exonerated the Insurance Company by taking into the legal principle that was in vogue then, but, however, in view of the decision of the Hon'ble Supreme Court in **S. Iyyapan v. United India Insurance Company Limited and another**[1], since the driver of the auto-rickshaw was holding Non-transport driving license, but he was driving the transport vehicle at the relevant time, the Insurer can be directed initially to deposit the compensation and recover the same from the owner of the vehicle. That has been the law declared by the Hon'ble Supreme Court in the said decision.

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[1]. AIR 2013 (SC) 2262 = 2013 ACJ 1944

7. Now, turning to whether the petitioners are entitled to enhancement? The Tribunal has taken Rs.15,000/- per annum as the income of the petitioner, who was 23 years old; he was a coolie by then. The income fixed by the Tribunal appears to be based on a guess work and, in fact, in 2001, a cooli must be earning at least Rs.70/- to Rs.90/- per day. Thus, keeping in view, that the annual income of the petitioner would be Rs.24,000/- and the appropriate multiplier factor being '18' for the age group of persons between 21-25 years, when the loss of earning capacity at 10% is calculated, it works out to Rs.43,200/-. The amount of Rs.4,500/- granted by the Tribunal towards medical expenses, pain and suffering are far below. Therefore, towards pain and suffering, a sum of Rs.10,000/- is awarded keeping in view, the nature of injuries sustained by the petitioner, and towards medical expenses, the amount of Rs.4,500/- granted by the Tribunal is construed as such. Even towards attendant charges, nothing is awarded and, therefore, a sum of Rs.3,000/- is awarded for a period of two months. Thus, the petitioner is totally entitled to Rs.60,700/- as the compensation as against Rs.30,000/- awarded by the Tribunal and, accordingly, the same is awarded fixing initial liability on respondent No.2 - Insurer to deposit the amount and to recover the same from respondent No.1, owner of the vehicle.

8. Concerning rate of interest, the Tribunal granted the same at 9% per annum, which is not disturbed on the amount awarded by the

Tribunal. However, interest at 7.5% per annum is awarded on the enhanced amount of Rs.30,700/- from the date of petition till date of realization in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[2].

9. The appeal is, accordingly, allowed in part, and the order and decree, dated 27.02.2004, passed by the Tribunal are modified enhancing the compensation to Rs.60,700/- (Rupees sixty thousand and seven hundred) from Rs.30,000/- granted by the Tribunal with interest at 9% per annum on Rs.30,000/- awarded by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.30,700/- from the date of petition till date of realization, and also directing respondent No.2 - Insurer initially to deposit the aforesaid compensation amount and to recover the same from respondent No.1, owner of the auto-rickshaw. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

October 24, 2017.
Mgr

[2]. 2013 ACJ 1403