

**\* THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

**+ M.A.C.M.A.No.266 of 2011**

**% 04.10.2023**

**Between:**

Ponnuru Anjaneyulu,  
S/o.P.Basavaiah, Aged about 28 years,  
Occ:Business, R/o.MIG-II-12/F3,  
A.P.H.B.Colony, Bhavanipuram,  
Vijayawada.

... Appellant

**And**

1. S.Durga Rao,  
S/o.Narasimha Rao, Hindu, Aged about not known,  
Owner of the Auto Rickshaw bearing No.AP 16 X 4304,  
R/o.7-5-56, Papaiah Street, Mahantipuram,  
Vijayawada.
2. National Insurance Company Limited,  
Represented by its Divisional Manager,  
Alibaig Street, Vijayawada.

... Respondents

**DATE OF JUDGMENT PRONOUNCED: 04.10.2023**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

1. Whether Reporters of Local Newspapers  
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be  
marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to  
see the fair copy of the Judgment? Yes/No

**DUPPALA VENKATA RAMANA, J**

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... Respondents

**! Counsel for Appellant** : M/s.B.G.Uma Devi

**^ Counsel for 2<sup>nd</sup> Respondent** : Sri V.Venkata Rami Reddy

**< Gist:**

**> Head Note:**

**? Cases referred:**

1. (2011) 1 SCC 343
2. (1965) 1 ALL ER 563
3. 2013 ACJ 2161 (SC)
4. (2020) 4 SCC 413
5. (1879) LR 5 QBD 78
6. (1963) 2 WLR 1359
7. (2009) 6 SCC 121
8. (2003) 2 SCC 274
9. 2019 ACJ 559 (SC)

This Court made the following:

**HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

**M.A.C.M.A.No.266 of 2011**

**JUDGMENT:**

This appeal is preferred by the appellant/petitioner aggrieved by the Order and Decree dated 25.06.2007 passed in M.V.O.P.No.1020 of 2001 on the file of the Motor Vehicle Accidents Claims Tribunal-cum-V Additional District Judge, Vijayawada (for short "the Tribunal").

2. For the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

3. The brief facts of the case are that the petitioner was a resident of Bhavanipuram, Vijayawada and he used to run stone-crusher and lorry tipper at Mulapadu. On 09.02.2001 at about 11.30 p.m., while the petitioner was returning from Mangalagiri to Vijayawada on a motorcycle bearing No.AP 31 N 612 and when he reached Prakasam Barrage, an auto rickshaw bearing No.AP 16 X 4304 (hereinafter referred to as "the offending vehicle") being driven by its driver in a rash and negligent manner and without blowing the horn dashed the petitioner as a result, he fell down and sustained bleeding injuries on his head and multiple fractures on his right leg and other

injuries all over the body. Immediately, the petitioner was shifted to Government General Hospital, Vijayawada by the auto driver.

(ii) On receipt of information, I Town Police, Vijayawada recorded the statement of the petitioner and based on the statement, a case in Crime No.92 of 2001 was registered by the I Town Police, Vijayawada, for the offence under Section 338 IPC. After investigation of the case, a charge sheet was submitted against the accused-driver.

(iii) The petitioner/injured filed an application claiming compensation of a sum of Rs.3,00,000/- before the Tribunal on account of the injuries sustained by him in the said accident.

(iv) The 1<sup>st</sup> respondent/owner of the offending vehicle did not contest the matter.

(v) The 2<sup>nd</sup> respondent/Insurance Company filed a written statement and contended that the insured and insurer of the motorcycle bearing No.AP 31 N 612 are proper and necessary parties. It is further contended that there was no rash and negligent driving of the driver of the offending vehicle in causing the accident. As such, this respondent is not liable to pay the compensation. It is further contended that there was medical negligence in treating the petitioner. It is further contended that the petitioner has not sustained any permanent or partial

disability and there was no loss of income to the petitioner due to the injuries sustained by him and prayed for dismissal of the petition.

(vi) On the basis of the pleadings of the parties, the Tribunal framed the following issues:

- (i) *Whether the petitioner sustained injuries in a motor vehicle accident on 19.02.2001 due to the rash and negligent driving of the driver of the Auto bearing No.AP 16 X 4304?*
- (ii) *Whether the petitioner is entitled to the compensation as prayed for, if so, from whom?*
- (iii) *To what relief?*

(vii) During the trial, in order to establish his claim, the petitioner/claimant was examined as P.W.1 and Dr.D.Venkatesh and Dr.R.Meher Prasanna, who treated the injured, were examined as P.Ws.2 and 3 and got marked Exs.A.1 to A.122 and Ex.X.1. The 1<sup>st</sup> respondent neither led any evidence nor marked any documents on his behalf. The Legal Assistant of the 2<sup>nd</sup> respondent/Insurance Company was examined as R.W.1 and Exs.B.1 to B.3 were marked.

(viii) The Tribunal, after analyzing the entire oral and documentary evidence, came to the conclusion that the alleged accident occurred on 19.02.2001 due to the rash and negligent driving of the offending auto bearing No.AP 16 X 4304 by its driver

due to which he sustained injuries. Considering the above aspect, the learned Tribunal awarded compensation of Rs.1,05,000/- with interest @ 7.5% per annum and with proportionate costs against the 1<sup>st</sup> and 2<sup>nd</sup> respondents, from the date of petition till the date of realization.

(ix) On appreciation of the evidence, the learned Tribunal has awarded the compensation of Rs.1,05,000/-. The learned Tribunal has discussed the manner in which the said compensation was arrived at, and the corresponding amount is set out herein below in a tabular form for ready reference.

<b>S.No.</b>	<b>Heads of compensation</b>	<b>Amount of compensation awarded in Rs.</b>
1	Pain and Suffering	15,000/-
2	Loss of earnings on account of the disability & Extra Nourishment	50,000/-
3	Medical Expenses	40,000/-
	<b>Total</b>	<b>1,05,000/-</b>

(x) Aggrieved by the said award, the appellant/injured preferred the present appeal seeking enhancement of the compensation.

4. Heard Ms.B.G.Uma Devi, learned counsel for the appellant and V.Venkata Rami Reddy, learned Standing Counsel for the Insurance Company.

5. Learned counsel for the appellant/injured would submit that the compensation as awarded by the Tribunal is meager, though

an amount of Rs.3,00,000/- was claimed. Further, she would submit that the appellant is entitled to more compensation than the amount claimed in the original petition, as his earning capacity was severely affected in view of the nature of the injuries sustained by him. She would further submit that the appellant/injured is entitled to more compensation under the head of loss of earning capacity. Further, she would submit that the impugned Order and Decree passed by the Tribunal is erroneous and is contrary to the material on record, which cannot be sustained under law. Further, she would submit that the Tribunal erred in accepting the contentions of the insurer. She would further submit that the appellant/injured is entitled to the amounts under different heads in the light of the principles laid down by the Hon'ble Apex Court in **Raj Kumar Vs. Ajay Kumar & another**<sup>1</sup>. Further, she would submit that the petitioner was the owner of the lorry bearing No.AP 31 U 703, he was an income tax assessee and he used to earn Rs.10,000/- per month and due to the injuries sustained in the alleged accident, he was unable to perform his business actively. Therefore, the petitioner is entitled to compensation under the head of loss of past and future

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<sup>1</sup> (2011) 1 SCC 343

earnings. Further, she would submit that the petitioner spent a huge amount on the fractures sustained to his right leg above the knee and steel plates were inserted and thus, the amount awarded by the learned Tribunal for medical expenses is very meagre. Further, she would submit that the petitioner was an inpatient for more than two months for his treatment and surgeries and for five years he was unable to attend the business transactions. She would further submit that the Tribunal has grossly erred in assessing the income of the petitioner although, he was getting a monthly income of Rs.10,000/- as mentioned in the petition and awarded compensation, which is not sustainable under law. Further, she would submit that the Tribunal has not awarded compensation under the head of attendant charges. Therefore, she urged that the amount of compensation may be determined and just and reasonable compensation may be awarded.

6. Learned Standing Counsel for the 2<sup>nd</sup> Respondent/Insurance Company would submit that the Tribunal has taken into account all the relevant factors while arriving at the compensation payable to the claimant. Further, he submitted that there was contributory negligence on the part of the driver of the offending vehicle and the rider of the motorcycle in causing the accident. The insured and the insurer of the motorcycle are also responsible for paying the

compensation. Further, he would submit that no evidence has been adduced by the petitioner to prove his income before the Tribunal and as such the Tribunal has not assessed the income of the petitioner/claimant to pass an Award. Therefore, the compensation awarded by the Tribunal is just and proper and the Award does not suffer from any infirmity or illegality, which may not call for any interference.

7. In the light of the above rival arguments, the points for determination in this appeal are:

1. *Whether the compensation awarded by the Tribunal is not in accordance with the principles of law and requires enhancement?*
2. *Whether the compensation awarded by the Tribunal is just and reasonable or needs interference of this Court?*

POINT Nos.1 and 2:

8. A perusal of the impugned award would show that the Tribunal has framed Issue No.1 as to whether the petitioner sustained injuries in a motor vehicle accident on 19.02.2001 due to the rash and negligent driving of the driver of the Auto bearing No.AP 16 X 4304, to which the Tribunal after considering the evidence of P.W.1(Injured) and P.Ws.2 & 3(Doctors), coupled with documentary evidence, has categorically observed that the accident occurred due to the rash and negligent driving of the

driver of the auto bearing No.AP 16 X 4304. Therefore, there is no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle (auto) bearing No.AP 16 X 4304.

9. It is a well-settled principle that while determining the compensation payable to the injured in the claim filed under the Motor Vehicles Act, 1988, this Court referred to the judgment of the Court of Appeal in **Ward Vs. James**<sup>2</sup> Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 12 (Page 446) wherein, it was held as follows:

*“When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration”.*

10. Further, it is relevant to refer to the judgment of the Hon'ble Apex Court in **Rekha Jain Vs. National Insurance Co. Ltd.**,<sup>3</sup> wherein, it was held as follows:

*“It is well settled principle that in granting compensation for personal injury, injured has to be compensated (1) for pain and suffering (2) for loss of amenities, (3) shortened expectation of life, if any, (4) loss of earnings or loss of earning capacity or in some cases for both, and (5) medical treatment and other special damages”.*

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<sup>2</sup> (1965) 1 All ER 563

<sup>3</sup> 2013 ACJ 2161 (SC)

11. If the above two judgments are read together, the intention of the Hon'ble Apex Court, though under different contexts, is crystal clear that the impugned award passed by the learned Tribunal is not just and reasonable. In the facts of this case, looking into the beneficial purpose of the enactment of the Motor Vehicles Act and having regard to the principles laid down in the aforementioned judgments, this Court is of the view that the award passed by the Tribunal is not in accordance with law.

12. In **Kajal Vs. Jagdish Chand**<sup>4</sup>, the Hon'ble Apex Court has quoted pertinent observations from a very old case in **Phillips Vs. London & South Western Railway Co.**,<sup>5</sup> as under:

*“You cannot put the plaintiff back again into his original position, but you must bring your reasonable common sense to bear, and you must always recollect that this is the only occasion on which compensation can be given. The plaintiff can never sue again for it. You have, therefore, now to give him compensation once and for all. He has done no wrong, he has suffered a wrong at the hands of the defendants and you must take care to give him full fair compensation for that which he has suffered.” Besides, the Tribunals should always remember that the measures of damages in all these cases “should be such as to enable even a tortfeasor to say that he had amply atoned for his misadventure.”*

13. The Hon'ble Apex Court has further quoted pertinent observations from the case titled **H. West & Son Ltd. vs. Shephard**<sup>6</sup> as under:

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<sup>4</sup> (2020) 4 SCC 413

<sup>5</sup> (1879) LR 5 QBD 78

<sup>6</sup> 1963 2 WLR 1359

*“Money may be awarded so that something tangible may be procured to replace something else of the like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Futhermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards.*

14. In the instant case, the learned Standing Counsel for the 2<sup>nd</sup> respondent/Insurance Company while submitting arguments stated that the accident occurred due to a head on collision and the injured is responsible for the contributory negligence in causing the accident. The said plea was not taken either in the written statement of the 2<sup>nd</sup> respondent or in the evidence of R.W.1. Therefore, the learned Tribunal did not give any finding about the contributory negligence. On the other hand, the learned Tribunal observed that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle. Therefore, there is no force in the contention raised by the learned counsel for the Insurance Company with regard to the contributory negligence of the petitioner in causing the accident. As such, the Insurance Company cannot escape from its liability.

15. In the case on hand, the petitioner/injured has taken a plea in the petition as well as in the evidence that he was

self-employed and he had a lorry bearing No.AP 31 U 703. Further, he was an income tax assessee and he used to earn Rs.10,000/- per month by transacting the business with third parties. To substantiate the above said pleas, neither oral evidence nor any documentary evidence is adduced by the petitioner. Therefore, there is no force in the contention that the petitioner used to earn Rs.10,000/- per month.

16. In the instant case, the learned Tribunal has not assessed the monthly income of the injured. It is not in dispute that the petitioner/injured was aged about 28 years by the date of the accident. In the absence of proof of the income of the injured as self-employed @ Rs.10,000/- per month, this Court is of the view that he should be considered as a labour and as per the Minimum Wages Act, he used to earn Rs.100/- per day i.e., Rs.3,000/- per month at the time of the accident, on the assumption that the wages of a labour/coolie during the relevant period i.e., in the year 2001 was Rs.100/- per a day i.e., Rs.3,000/- per a month. Therefore, the claim of the petitioner can be determined by taking his monthly income as Rs.3,000/-.

17. The learned Tribunal has not given any cogent reasons for arriving at a conclusion in fixing the compensation to the petitioner. The learned Tribunal also referred to various exhibits

supporting the case of the petitioner with regard to the bills issued by the hospitals and treated them as genuine but awarded a meager amount of Rs.40,000/- against Rs.1,14,218/- as per the medical bills.

18. Despite referring to the various exhibits in proof of the injuries sustained and expenses incurred by the petitioner for the treatment, the Claims Tribunal has not properly evaluated the compensation claimed by the petitioner. The evidence of the Doctors/P.Ws.2 and 3, who treated the injured, coupled with the disability certificate, is very much relevant to assessing the compensation.

19. Dr.D.Venkatesh, Orthopedic Surgeon was examined as P.W.2. He deposed that periodically he treated the petitioner. The petitioner underwent an operation on his right leg and an implant (rod) was inserted in his right leg. He further deposed that the operation was conducted in Ortho Care Hospital. Ex.A.101 was issued by him towards the cost of the implant, surgery fee etc. He further deposed that due to multiple fractures, the treatment took a long time and prolonged bed rest was required. Further, due to a shortage of the right leg, the petitioner has got disability of 40% to 50%.

20. Another Doctor i.e., Dr.R.Meher Prasanna, who treated the injured was examined as P.W.3. He deposed that he treated the petitioner/injured on 17.06.2005 for commuted fracture of right patella and Exs.103 and 105 to 112 are the bills towards medicines and expenses. He further deposed that as per Ex.P.9/Discharge Summary, the petitioner sustained three grievous and two simple injuries. P.W.1 deposed that due to accident he sustained multiple injuries, and he was treated by P.Ws.2 and 3 and Ex.A.8 is the Disability Certificate issued by the Medical Board.

21. A perusal of Ex.A.8/Disability Certificate issued by the Medical Board discloses that the petitioner/injured sustained 40% disability. Perusal of Ex.A.4/Discharge Summary discloses that the petitioner was admitted in Lokesh Nursing Home, Vijayawada on 20.02.2001 and discharged on 24.03.2001 and during his prolonged treatment the petitioner produced so many medical bills, which were not considered by the learned Tribunal. The petitioner/injured sustained 40% disability, and three grievous injuries, he was operated on his right leg and the implant was inserted. The learned Tribunal recorded the finding that the disability sustained by the petitioner is not a permanent disability and the said finding is not sustainable. Keeping in view of the

disability as certified by the concerned Medical Board, the amount of compensation has to be arrived at, which should be just and reasonable.

22. The assessment of loss of future earnings is explained in *Raj Kumar's case (supra)*. The calculation of compensation will be as follows:

a) Annual income before the accident	....	Rs.36,000/-
b) Loss of future earnings per annum (40% of the prior annual income)	....	Rs.14,400/-
c) Multiplier applicable with reference to age (As per the judgment of Hon'ble Apex Court in <b>Sarla Verma Vs. Delhi Transport Corporation</b> <sup>7</sup> )	....	17
d) Loss of future earnings (Rs.14,400 x 17)		<b>.... Rs.2,44,800/-</b> (Rs.3,000 x 12 x 17 x 40/100)

23. Further, in tune with the expression of the Hon'ble Supreme Court in *Raj Kumar's case (supra)*, the petitioner/claimant is also entitled to future medical expenses, loss of earnings during the period of treatment and transportation charges. Considering the facts and circumstances of the case, it is deemed to award a reasonable amount under the heads. The claims tribunal awarded an amount of Rs.40,000/- as against the bills observed by this Court for an amount of Rs.1,14,218/-, which is not tenable. Further, the injured, who is a labourer, is not supposed to be that

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<sup>7</sup> (2009) 6 SCC 121

much meticulous in maintaining the bills for any future use. The claimant has remained in the hospital for nearly three months. He was admitted in various hospitals for treatment and underwent surgery. Certainly, the medical expenditure incurred would be more than the awarded amount as his right leg was operated, the implant was inserted and subsequently removed. It is evident that the petitioner/claimant sustained three grievous injuries, one major surgery was done, and the implant was inserted in the right leg. One must remember that amongst people who are not Government employees and belong to the poorer strata of society, bills are not retained. Some of the bills have been excluded by the Court below on the ground that the name of the patient is not written on the bills. There is no dispute with regard to the long period of treatment and hospitalization of the petitioner/injured. Therefore, limiting the amount only to the bills that have been paid in the name of the petitioner only, would not be reasonable and the learned Tribunal has not given cogent reasons to reduce the amount from Rs.1,14,218/- to Rs.40,000/- towards medical expenses. Therefore, the amount of Rs.40,000/- awarded towards medical expenses is not just and reasonable. Therefore, under this head the compensation is enhanced from Rs.40,000/- to Rs.1,50,000/-. Further, in view of the injuries sustained by the

petitioner, he would have incurred medical expenses in the future. Therefore, this Court is of the view that awarding an amount of Rs.10,000/- towards future medical expenses would be just and reasonable.

24. Further, the petitioner/claimant has remained in the hospital for nearly three months, as stated above, and as such, he might have lost his income during that period. Therefore, an amount of Rs.9,000/- (Rs.3,000 x 3) can be awarded to the petitioner for loss of earnings during the period of treatment.

25. The petitioner/claimant would have been entitled to separate attendant charges for the period during which he was hospitalized. The learned Tribunal has not awarded the attendant charges. Even if the Court has not paid the attendant charges, the family members of the injured must have paid the attendant charges, who had attended the hospital. The family members also left their work in the village to attend to the injured in various hospitals. The claimant would have at least one attendant and taking the cost of minimum wages of Rs.100/- per day, an amount of Rs.9,000/- is awarded towards attendant charges.

26. As far as the present case is concerned, the injured suffered grievous injuries and was operated and implant was inserted and subsequently removed. This is a case where the departure has to

be made from the normal rule and pain and suffering suffered by the injured is such that a reasonable amount of compensation can be compensated for pain and suffering. Therefore, this Court is of the opinion that in the peculiar facts and circumstances of the case, by taking a very conservative view of the matter, the amount payable for pain and suffering to the injured should be at least Rs.1,00,000/- against Rs.15,000/-, which was awarded by the learned Tribunal.

27. In *Sarla Verma's case (supra)*, the Hon'ble Apex Court, while elaborating the concept of 'just compensation' observed as under:

*"Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."*

28. On an overall re-appreciation of the pleadings, material on record and the law laid down by the Hon'ble Supreme Court in the afore-cited decisions, I am of the definite opinion that the appellant/petitioner is entitled to enhancement of compensation as modified and recalculated above and given in the table below for easy reference.

<b>S.No.</b>	<b>Head of Compensation</b>	<b>Amount awarded by the Tribunal</b>	<b>Enhanced Amount</b>
1	Pain & Suffering	15,000/-	1,00,000/-
2	Three Grievous injuries	----	75,000/- (Rs.25,000 x 3)
3	Simple Injuries	----	5,000/-
4	Medical Expenses (As per bills he spent Rs.1,14,218/-)	40,000/-	1,50,000/-
5	Transport Expenses	----	5,000/-
6	Loss of future earnings	50,000/-	2,44,800/- (Rs.3,000 x 12 x 17 x 40/100)
7	Loss of earnings during the period of treatment	----	9,000/-
8	Attendant Charges	----	9,000/-
9	Future Medical Expenses	----	10,000/-
<b>Total</b>		<b>1,05,000/-</b>	<b>6,07,800/-</b>

29. As per the decision of the Hon'ble Supreme Court of India in ***Nagappa Vs. Gurudayal Singh and others***<sup>8</sup>, under the provisions of the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if Tribunal /Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such an award. There is no embargo to award compensation more than that claimed by the claimant. Rather it is obligatory for the Tribunal and Court to award "just

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<sup>8</sup> (2003) 2 SCC 274

compensation”, even if it is in excess of the amount claimed. The Tribunals are expected to make an award by determining the amount of compensation which should appear to be just and proper. In the present case, the compensation as awarded by the learned Tribunal, against the background of the facts and circumstances of the case, is not just and reasonable and the claimant is entitled to more compensation though he might not have claimed the same at the time of filing of the claim petition.

30. Having regard to the facts and circumstances of the case and in view of the law laid down by the Hon’ble Apex Court, this Court is of the opinion that the award passed by the Tribunal warrants interference and the amount of compensation needs to be enhanced and thereby, enhanced the compensation from Rs.1,05,000/- to Rs.6,07,800/-.

31. **Resultantly**, the appeal is hereby allowed, enhancing the compensation from Rs.1,05,000/- to Rs.6,07,800/- with costs and interest at 7.5% per annum from the date of the petition till realization against the Respondents 1 and 2 jointly and severally.

(ii) Respondents are directed to deposit the compensation amount within a period of two months from the date of this judgment, failing which execution can be taken against them.

(iii) The appellant/petitioner is directed to pay the requisite Court-fee in respect of the enhanced amount awarded over and above the compensation claimed (As per the judgment of Hon'ble Apex Court in **Ramla Vs. National Insurance Company Limited<sup>9</sup>**).

(iv) On such deposit, the appellant/petitioner is entitled to withdraw the entire amount by filing a proper application before the Tribunal.

(v) The impugned award of the learned Tribunal stands modified to the aforesaid extent and in the terms and directions as above.

(vi) The record be sent back to the Tribunal within three weeks from this day.

As a sequel, interlocutory applications pending for consideration, if any, shall stand closed.

**JUSTICE DUPPALA VENKATA RAMANA**

04.10.2023

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<sup>9</sup> 2019 ACJ 559 (SC)

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