

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A No.219 of 2006

JUDGMENT:

This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the appellant-petitioner, aggrieved by the order, dated 24.02.2005, passed in M.V.O.P No.299 of 2001, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Cuddapah (for short, 'the Tribunal').

2. Appellant herein is the petitioner and the respondents herein are respondents before the Tribunal.

3. For convenience of reference, the ranks given to the parties before the Tribunal will be adopted throughout this judgment.

4. Facts leading to filing of M.V.O.P. No.299 of 2001, in brief, are that on the date of incident i.e., on 21.05.1999 while the petitioner was traveling in Tipper bearing No.AP-04-T-6185 as cleaner, after loading the sand, and when they reached Gargeyapuram of Kurnool District, due to rash and negligent driving of its driver, he lost control and the tipper turned turtle. The petitioner received injuries on the head and other parts of the body and he was shifted to Government Hospital, Kurnool. As the condition was serious, he was shifted to NIMS Hospital, Hyderabad, where he was treated as inpatient for two months. Due to the accident, he lost his vision of left eye and is getting headache frequently and losing memory. Due to fracture of right hand, the petitioner is unable to do normal works as he used to do prior to the accident. The petitioner claims that he is earning an amount of Rs.2,000/- per month as salary and Rs.30/- batta per day as cleaner. Since the policy of vehicle of R.1 was in force at the time of

accident, both respondents are jointly and severally liable to pay compensation.

5. Respondent No.1 remained *ex parte*.

6. Respondent No.2 filed counter opposing the claim.

7. On the basis of above pleadings, the Tribunal framed the following issues:

1. Whether the petitioner received injuries in a motor vehicle accident, dated 21.05.1999 due to rash and negligent driving of Tipper bearing No.AP-04-T-6185 by its driver belonging to the respondent No.1?

2. Whether the petitioner is entitled for compensation and if so, to what amount and from whom?

3. To what relief?

8. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A-1 to A-10 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

9. Upon hearing argument of both the counsel and considering oral and documentary evidence available on record, the Tribunal decreed the petition, in part, awarding a total compensation of Rs.3,22,504/- with proportionate costs and interest at the rate of 9% p.a. from the date of petition till the date of realization making both the respondents jointly and severally liable.

10. Being aggrieved by the quantum of compensation awarded by the Tribunal, this Appeal is preferred by the appellant-petitioner.

11. Heard both sides.

12. Considering the rival contentions and perusing the material available on record, the point that arises for consideration in this

Appeal is whether the appellant is entitled for enhancement of compensation? If so, to what extent?

13. **POINT:**

Learned counsel for the appellant submits though that the appellant sustained two simple injuries and one grievous injury, the Tribunal has granted only Rs.10,000/- towards two simple injuries and pain and suffering. Apart from that though the appellant lost 100% vision of his left eye, the Tribunal has considered only 60% loss of earning capacity and calculated the compensation and the same is not in accordance with law and therefore, sought for enhancement of the same. He also placed reliance in **Oriental Insurance Co., Ltd., Vs. Koti Reddy and another¹** and **Pasupuleti Ramarao Vs. Pothinaboina Durgarao And others²**.

14. As seen from the order, the Tribunal has rightly calculated loss of earning capacity at 60% though originally it was 30%. Therefore, I do not see any valid ground to interfere with the said finding. Learned counsel for the appellant further submits that though the appellant has sustained two simple injuries and one grievous injury, Tribunal has awarded only an amount of Rs.10,000/- towards two simple injuries and pain and suffering.

15. It is obvious that the Tribunal has considered that the appellant has suffered two simple injuries and awarded compensation only for pain and suffering, but it has not awarded compensation for the injuries actually suffered by the appellant. Therefore, considering the nature of injuries suffered by the appellant and in view of facts and

¹ (2001 ACJ 244)

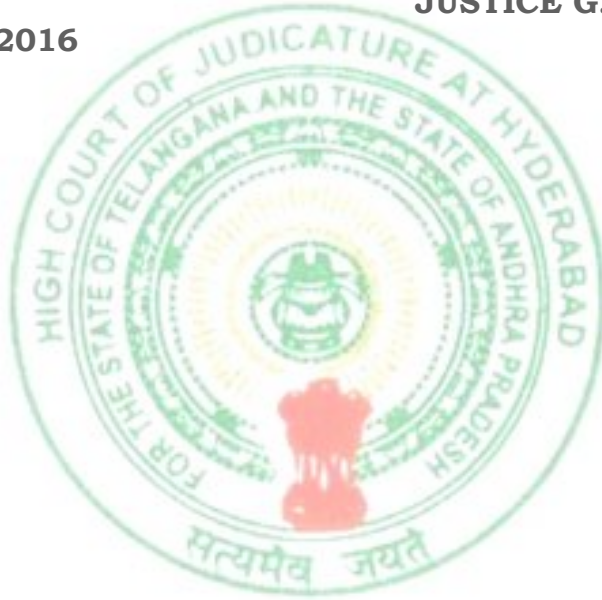
² (2001 ACJ 297)

circumstances of the case, the appellant is awarded an amount of Rs.10,000/- for each simple injury, which comes to Rs.20,000/-.

16. In the result, the appeal is allowed in part enhancing the compensation from Rs.3,22,504/- to Rs.3,42,504/- with interest at the rate of 9% per annum from the date of petition till realization. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal stand closed.

OCTOBER 31, 2016
YVL

JUSTICE G.SHYAM PRASAD



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Date:31.10.2016

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