

THE HON'BLE SMT JUSTICE ANIS

MACMA.No.323 of 2008

JUDGMENT:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order dated 01.11.2007, passed by the Chairman, Motor Accident Claims Tribunal -cum- I Additional District Judge, Kadapa, in M.V.O.P.No.497 of 2005, awarding compensation of Rs.2,46,220/-.

2. The petitioner filed the above O.P. under Section 166 of the Act claiming compensation of Rs.8,00,000/- for the injuries sustained by him in a motor vehicle accident occurred on 10.06.2005.

3. According to the petitioner, on 10.06.2005, after grazing the sheep along with other shepherds, he was taking the sheep to Konampeta. When he was searching for one sheep and when he reached L.R. Palli-Rayachoty main road, one jeep bearing No.AP02 U 4445 driven by its driver in a rash and negligent manner, dashed him from behind, as a result of which, he fell down and sustained grievous injuries. He was shifted to the

Government Hospital, Kadapa, and from there, he was shifted to NIMS, Hyderabad. His right lower limb was amputated above the knee and a case in Crime No.24 of 2005 was registered by the police, L.R.Palli. He stated that due to the injury, he was not in a position to work. He further stated that the first respondent is the owner of the jeep and the second respondent is the insurance company and the insurance policy was in force at the time of accident. Therefore, he prayed the Court to grant compensation.

4. The first respondent remained *ex parte*.

5. The brief averments mentioned in the counter filed by the second respondent – insurance company are as follows:

The second respondent while denying the occurrence of accident, age and income of the petitioner, stated that there was no rash and negligent driving on the part of the driver of the jeep and the petitioner has not suffered injuries in the accident. The second respondent denied that the petitioner was earning Rs.80,000/- to Rs.1,00,000/- per annum by grazing the sheep, and finally stated that the compensation claimed by the petitioner is

high and excessive and thereby, prayed the Court to dismiss the petition.

6. Based on the above pleadings, the Tribunal framed three issues. To substantiate the claim, the petitioner examined himself as P.W.1 and got examined two witnesses as P.Ws.2 and 3 and marked Exs.A.1 to A.8 and also Ex.X.1. On behalf of the second respondent, no oral and documentary evidence was adduced.

7. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the jeep bearing No.AP02 U 4445 and awarded compensation of Rs.2,46,220/- along with interest @ 7.5% per annum.

8. Not satisfied with the compensation awarded by the Tribunal, the petitioner filed the present appeal.

9. Learned counsel for the appellant argued that in the accident, the appellant suffered amputation to his right lower limb above the knee and that the Tribunal without considering the evidence of the Doctor and without any basis, reduced the disability of the appellant from 70% to 50%. He further argued

that the compensation awarded by the Tribunal with respect to extra-nourishment is very meagre and thereby, prayed the Court to enhance the compensation.

10. On the other hand, learned Standing Counsel for the second respondent argued that the compensation awarded by the Tribunal is just and reasonable as such the findings of the Tribunal need no interference. The learned Standing Counsel also argued that the Tribunal by seeing the petitioner in the Court Hall has taken a right decision that he suffered 50% disability and thereby, prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel for both the parties, the only point that arises for consideration is:

Whether the compensation awarded by the Tribunal is just and reasonable and whether the appellant is entitled for enhancement of compensation?

12. A perusal of the record shows that the accident occurred due to rash and negligent driving of the driver of the jeep bearing No.AP02 U 4445 as such the finding of the Tribunal with regard to the said aspect needs no interference.

13. Coming to the compensation awarded to the appellant, a perusal of the evidence of P.Ws.1 and 2 shows that in the accident, the appellant suffered grievous injury and lost his right lower limb and the doctors conducted operation and amputated his right lower limb above the knee. In his evidence, P.W.2, who is the doctor, categorically stated that the disability suffered by the appellant is 70%. Though the Tribunal has reduced the disability suffered by the appellant from 70% to 50% only by seeing him in the Court Hall, this Court after considering the evidence of P.W.2, is of the opinion that the disability of the appellant can be taken at 70%. Therefore, the loss of earning capacity of the appellant can be arrived at Rs.2,85,600/- ($\text{Rs.2,000/-} \times 12 \times 17 \times 70/100$). The Tribunal after considering the evidence rightly awarded Rs.15,000/- towards pain and suffering, Rs.10,000/- towards inconvenience suffered by the appellant and Rs.6,000/- towards attendant charges. So far as the compensation awarded under the head of extra-nourishment is concerned, the Tribunal awarded only Rs.2,000/-. The said amount is very meagre. Therefore, it is enhanced to Rs.4,000/-.

Thus, the appellant is entitled to Rs.3,20,600/- towards total compensation.

14. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.2,46,220/- to Rs.3,20,600/-.

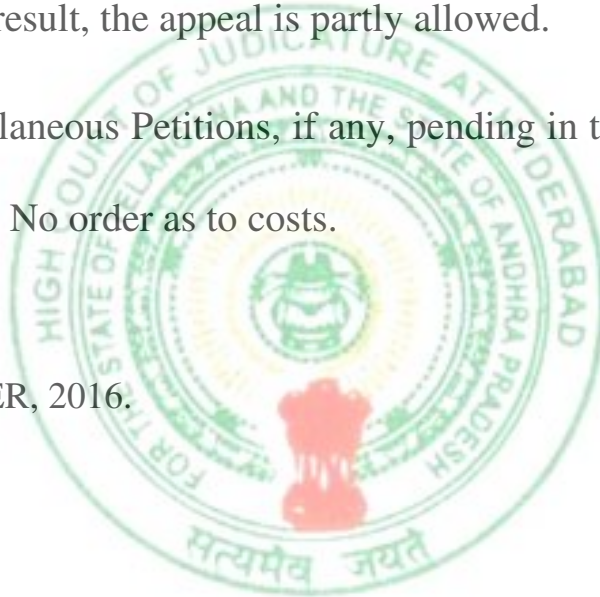
15. I am of the view that the interest @7.5% per annum can be awarded on the enhanced amount of Rs.74,380/- from the date of appeal till the date of realization.

16. In the result, the appeal is partly allowed.

17. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. No order as to costs.

21st OCTOBER, 2016.

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ANIS, J