

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.2901 of 2005

JUDGMENT:

Claimant, in M.V.O.P.No.341 of 2002 on the file of the Motor Accidents Claims Tribunal (III Additional District Court), Kakinada, is the appellant in the present appeal, filed under Section 173 of the Motor Vehicles Act, 1988 (for brevity, 'the Act').

Heard and perused the material available before this Court.

In a motor accident that occurred on 30.03.2002 the appellant herein sustained injuries. Claiming compensation of Rs.3,50,000/-, for the injuries sustained by him, the appellant herein approached the Tribunal by way of filing M.V.O.P.No.341 of 2002, under the provisions of Section 166 of the Act. The third respondent-insurance company contested the matter by way of filing written statement and the respondents 1, 2 and 5 remained *ex parte* and the petition against the fourth respondent was dismissed for default.

On the basis of the material available, the Tribunal framed the following issues for consideration:

1. Whether the accident had occurred due to the rash and negligent driving of lorry bearing No.AP 5X 1188 and Bus bearing No.AP16W 8469 by the respondents 1 and 4 respectively?
2. Whether the petitioner is entitled for compensation? If so, to what amount and from which of the respondents?
3. To what relief?

During the course of trial, the claimant, apart from examining himself as P.W.1, also examined the Doctor, who treated him, as

P.W.2 and filed Exs.A1 to A4. Exs.X1 and X2 were also marked. On behalf of the respondents no oral evidence was adduced but Exs.B1 and B2 were filed.

On issue No.1, the Tribunal categorically found that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 5X 1188. While answering issue No.2, as to the quantum of compensation, the Tribunal awarded totally a sum of Rs.1,15,000/- under different heads.

According to the learned counsel for the appellant, the Tribunal grossly erred in fixing the income of the claimant as Rs.1500/- and ought to have fixed @ atleast Rs.3000/- per month as per the decision of the Honourable Apex Court in **LATHA WADHWA AND OTHERS v. STATE OF BIHAR AND OTHERS**¹. It is the submission of the learned counsel that, if the said figure is taken into consideration, the future earnings, for the period of six months, would come to Rs.18,000/- (Rs.3000/- X 6). It is also the submission of the learned counsel that the Tribunal awarded paltry amount of Rs.10,000/- towards future amenities and that Ex.A2 coupled with the evidence of P.W.2 discloses that the percentage of disability should be taken as 45% and that there was no basis for the Tribunal to restrict the same to 20%.

According to the law laid down by the Honourable Apex Court in **LATHA WADHWA** (cited supra) the minimum income is required to be taken as Rs.3000/- per month i.e. Rs.36,000/- per annum (Rs.3000/- X 12) but, in the instant case, the Tribunal fixed @ Rs.1500/- per month. As pointed out by the learned counsel for the

¹ (2001) 8 SCC 197

appellant the document i.e. Ex.A2 issued by the Doctor and the evidence of P.W.2 clearly discloses that the claimant suffered permanent disability of 45%, however, the Tribunal restricted the same to 20%. In the considered opinion of this Court, the amount granted towards future amenities is also paltry and this Court is inclined to enhance the same also.

This Court is inclined to fix the disability at 30% instead of 20%, fixed by the Tribunal, having regard to Ex.A2-document coupled with the evidence of P.W.2 and if the same is deducted, the loss of future earnings would Rs.1,62,000/-.

Having regard to the above reasons, this Court is of the opinion that the following would be just and reasonable compensation which needs to be awarded to the claimant in the instant case:

1. Amount towards pain and suffering:	Rs.35,000/-
Amount towards medical expenses:	Rs.4,000/-
Amount towards incidental expenses:	Rs.2,000/-
Amount towards extra nourishment:	Rs.1,000/-
Amount towards loss of future earnings:	Rs.1,62,000/-
Amount towards loss of earnings :	Rs.18,000/-
Amount towards future amenities:	Rs.20,000/-
Total:	<u>Rs.2,42,000/-</u>

For the aforesaid reasons, the appeal is allowed in part, enhancing the compensation from Rs.1,15,000/- to Rs.2,42,000/- with interest @ 7.5% p.a. from the date of the petition till the date of deposit with proportionate costs.

As a sequel thereto, miscellaneous Petitions pending, if any, in this appeal, shall stand closed. There shall be no order as to costs.

21st December, 2017
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A.V.SESHA SAI,J

