

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 806 of 2006

JUDGMENT:

This appeal is arising out of the Order and Decree dated 26.12.2005 passed in O.P.No.676 of 2003 by the III Additional District Judge-cum-MACT, Asifabad. The appellant herein is the petitioner-claimant before the Tribunal.

2. Brief facts of the case are that the appellant has filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,00,000/- for the injuries suffered by him in a motor vehicle accident that occurred on 05.02.2003, at 08:30 hrs when he was return home on foot at Mulkalla village and a TVS Fiero motor cycle came at a high speed and dashed against him. The claim was made against respondents 1 and 2, the owner and insurer of the offending motor cycle. The Tribunal, on consideration of the evidence, has awarded compensation of Rs.24,000/-. Aggrieved by the quantum of compensation awarded by the Tribunal, the claimant filed this appeal seeking enhancement of the compensation.

3. Heard the arguments of the learned counsel for the appellant. No representation on behalf of the respondents in spite of the notice served.

4. The point for consideration is whether the appellant-claimant is entitled for enhancement of compensation.

5. Learned counsel for the appellant submits that the compensation awarded by the Tribunal is inadequate and is not based on evidence produced. It is further submitted that on behalf of the appellant, PW1-the injured was examined and the medical officer PW2 was examined and documents Exs.A1 to A8 were marked but the Tribunal, without considering the medical evidence, has awarded inadequate compensation. It is mainly submitted that the appellant has suffered one grievous injury and one simple injury. It is further submitted that PW2 is the medical officer who has deposed that the appellant underwent surgical operation to his left leg and a steel pad was fixed and he has suffered permanent disability of 37%. On these grounds, it is argued that the compensation can be enhanced in this case.

6. On perusal of the evidence of PW2, Dr. YVS Prabhakar, it is obvious that he did not issue the disability certificate showing the permanent disability at 37%. But PW2 stated in his evidence when he was examined by the Advocate Commissioner on 19.12.2005 that the appellant has suffered permanent disability of 37%. Therefore, it is obvious that PW2, for the first time, stated in

his evidence before the Advocate Commissioner on 19.12.2005 that the appellant has suffered 37% disability. PW2 did not issue any disability certificate in proof of the said assessment of disability. Therefore, the Tribunal did not take into consideration the disability certificate issued by PW2. In fact, the conclusion reached by the Tribunal in not considering the disability certificate does not require any interference. However, the compensation awarded by the Tribunal does not appear to be adequate with reference to the injuries suffered by the appellant. The Tribunal in paragraph 13 of its judgment has awarded compensation observed as under:

“Regarding the medical expenses and extra nourishment, Ex.A-7 twenty-two medical bills that would show that Rs.20,000/- was spent towards medical expenses. Particularly the bill dated 14-03-2003 issued by Dr. Prabhakar of Orthopedic and Maternity Clinic would show that Rs.13,300/- was collected towards hospital charges. Pw-2 also in his evidence stated that the petitioner was treated as inpatient from 5-2-03 to 3-3-03 and he underwent surgery to his left leg and he was discharged on 3-3-03 with advise to take bed rest for three months and that an amount of Rs.13,100/- was spent towards medical expenses. Since the petitioner was inpatient from 5-2-03 to 3-3-2003 and since the petitioner suffered fracture it is quite probable that so much of expenditure was incurred. So, it is just and proper to award a sum of Rs.15,000/- towards medical expenses and extra nourishment.

7. It is obvious from the findings of the Tribunal that the appellant was treated as in-patient from 05.02.2003 to 03.03.2003 (for nearly one month) but the Tribunal has awarded

only Rs.15,000/- towards medical expenditure and extra-nourishment which can be enhanced to Rs.30,000/-.

8. On consideration of the evidence and the documents Exs.A1 to A7, the compensation awarded by the Tribunal is enhanced as shown in the following tabular format.

S.No.	Head	Compensation Awarded by the Tribunal	Compensation enhanced
1.	One grievous injury and one simple injury	Rs.4,000/-	Rs.30,000/-
2.	Medical expenditure and extra nourishment	Rs.15,000/-	Rs.30,000/-
3.	Loss of earnings	Rs.4,500/-	Rs.4,500/-
4.	Transport	Rs.500/-	Rs.2,000/-
	Total	Rs.24,000/-	Rs.66,500/-

9. **IN THE RESULT**, the appeal is partly allowed by awarding compensation of Rs.66,500/- with interest at 7.5% per annum from the date of petition till realisation. The respondents are directed to deposit the compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

23rd October, 2017

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