

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

M.A.C.M.A.No.1213 of 2006

JUDGMENT:

This is an appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking enhancement of compensation granted by the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kadapa in M.V.O.P.No.332 of 2003.

2. According to the claimant/appellant herein, he is a resident of Yerragudipalem, Pulivendula, Kadapa district and is an Auto Driver, earning Rs.4,500/- per month. It is the further case of the claimant that on 9.8.2002 at about 10.30 p.m., when he was coming in his Auto from Petrol pump towards Pulivendula town and when he reached RTC Bus stand, a Bus belonging to APSRTC came in opposite direction, driven by its driver, in a rash and negligent manner dashed the Auto and as a result of the same, the Auto fell down on the road and the petitioner sustained fracture and other injuries. It is the further case of the claimant that after the accident, he was shifted to Government Hospital, Pulivendula and on the next day, he was shifted to G.G.H. Kadapa, wherein he took treatment as inpatient from 10.8.2002 to 23.9.2002 and again admitted and took treatment from 23.12.2002 to 30.12.2002 and underwent operation to his left leg. It is the further case of the claimant that now he is unable to attend the work and unable to walk properly and limping. With the above pleadings, the appellant herein filed M.V.O.P.No.332 of 2003 against the respondent herein under the provisions of Section 166 of M.V. Act, claiming compensation of Rs.1,75,000/- with costs and subsequent interest. The learned Judge granted a lumpsum amount of Rs.40,000/- towards

compensation with proportionate costs and interest at the rate of 7.5% per annum from the date petition till the date of realisation. Seeking enhancement of the said compensation awarded by the Tribunal, the present Appeal came to be filed before this Court under Section 173 of M.V. Act.

3. According to the claimant/appellant, the amount awarded by the Tribunal is very paltry and not in proportion to the injury sustained by the appellant herein. It is further contended that the Tribunal ought not to have deducted the amount arrived at on the ground of contributory negligence in the absence of any evidence to the said effect.

4. The material available before this court discloses that apart from examining himself as P.W.1, the claimant/appellant herein examined Doctor as P.W.2 and marked Exs.A1 to A7 and on the respondent side, one Mr.B.Sekhar Babu who was driving the offending vehicle was examined as R.W.1. It is very much evident from the award of the Tribunal that the Tribunal arrived at compensation at Rs.60,000/-, but the same was reduced to Rs.40,000/- on the ground that there was contributory negligence on the part of the appellant in the said accident.

5. The written statement filed on behalf of the respondent is also placed on record. The said written statement alleges the entire negligence on the part of the appellant and denied any negligence on the part of the Driver of the offending Bus. A copy of the evidence of R.W.1 is also placed on record. A reading of the same discloses that no allegation of contributory negligence was made by R.W.1 in the said deposition. In the absence of any evidence to show the contributory negligence on the part of the claimant, adduced by the Management, this Court does not find any

justification on the part of the Tribunal to decrease the amount from Rs.60,000/- to Rs.40,000/-. Having regard to the material available before this Court and nature of injuries, this Court is of the opinion that that it would be just and proper to grant compensation at Rs.60,000/-.

6. For the aforesaid reasons, the C.M.A. is partly allowed, granting compensation of Rs.60,000/- along with interest at 7.5% with proportionate costs and interest from the date of petition till the date of realisation. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 20.11.2017
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A.V.SESHA SAI, J



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