

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1413 of 2005

JUDGMENT:

The appellant/claimant filed this appeal against the order and decree dated 06.07.2004 passed in O.P.No.44 of 2002 by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (FTC) at Nizamabad.

2. Heard learned counsel for appellant/claimant and learned counsel for respondents and perused the record.

3. The facts, in brief, are that on 12.01.2001, while the claimant and others were travelling by auto bearing No.AP-15-V-1867 from Kuknoor to Anksapoor village and when they reached near Kuknoor village shivar at about 9.30 AM., the tractor and trailer bearing Nos.AP-25-D-6991 and AP-25-T-1922 respectively, driven by its driver at high speed in a rash and negligent manner and dashed against the auto, due to which, the claimant and others sustained injuries. The claimant received injuries all over his body. He spent an amount of Rs.40,000/-towards medical expenditure. Hence, he filed the claim petition claiming compensation of Rs.2,00,000/- against the respondents.

4. R1 filed counter denying the allegations made in the claim petition with regard to the mode of accident and the nature of injuries sustained by the claimant and that the compensation claimed is highly excessive.

5. R2 filed counter denying the allegations made in the claim petition and contended that the compensation claimed under various heads is highly excessive.

6. Based on the pleadings, the Tribunal framed three issues. To substantiate the claim, P.W.1 was examined and Ex.A1-Certified copy of FIR, Ex.A2-Certified copy of charge sheet, Ex.A3-Police requisition. Ex.A4-Certified copy of injury certificate, Ex.A5-xerox copy of RC book of the tractor, Ex.A6-xerox copy of insurance policy, Ex.A7-Letter pad of MJ Hospital, Ex.A8-Discharge card issued by MJ hospital, Ex.A9-receipt for Rs.1800/-. Ex.A10-Requisition of private doctor, Ex.A11 and A12 are receipts, Ex.A13-Medical bill, Exs.A14 to A20 are X-ray films and Ex.A21-Scanning report of brain, were marked on behalf of the claimant. No evidence was adduced and no document was marked on behalf of respondents.

7. After considering the entire evidence on record, the Tribunal awarded compensation of Rs.15,000/- with interest at 9% per annum from the date of petition till realisation.

8. Learned counsel for appellant-claimant would submit that though the claimant has suffered with five simple injuries, fracture to his right leg and shortening of his right leg by ½” and he also filed wound certificate and x-ray films, the Tribunal did not consider the fracture injury and shortening of right leg and granted meagre compensation of Rs.15,000/- as against the claim of Rs.2,00,000/- and ultimately, he prayed for enhancement of compensation granted by the Tribunal.

9. On the other hand, learned counsel for 2nd respondent-insurer would submit that there is no record to believe that the petitioner suffered from fracture injury and that as the injury certificate-Ex.A4 reveals only simple injuries, the Tribunal assessed the said compensation payable to petitioner on all heads and there is no infirmity in the impugned order warranting interference by this Court and ultimately, he prayed for dismissal of the appeal.

10. In view of the contentions put forth by the learned counsel for both sides, the point that arises for consideration is, whether the appellant/claimant is entitled for enhancement of compensation?

11. **POINT**

As seen from Ex.A4-injury certificate, the claimant sustained the following injuries;

- (i) Laceration admeasuring 8"x2 from frontal area of the scalp to pareto occipital area.
- (ii) Three abrasions each admeasuring 2 cms x 1 cm on the right side of the chest.
- (iii) Multiple abrasions each admeasuring 2 cms x 2 cms on the right elbow and left elbow.
- (iv) Right eye shakened and nose was bleeding; and
- (v) Swelling on the right hand.

12. The contention of the appellant/claimant is that he sustained fracture injury to his right leg in the accident and Exs.A-14 to A-20 - X-ray films reveal the same. But, he has not filed any report to show that the said X-ray films belong to him. Further, the claimant did not examine the doctor, who treated him, to believe that he suffered with fracture injury to his right leg and suffered from shortening of ½" to his right leg. Had it been true, the claimant could have examined the

doctor and filed reports. It is pertinent to note that in Ex.A4-injury certificate, there is no mention about fracture injury to his right leg. Ex.A4 falsifies Exs.A14 to A20. So far as Ex.A13-Medical Bill is concerned, there is no evidence of doctor, but there is record to show that the claimant suffered only simple injuries. Therefore, it is not appropriate to act upon Ex.A13. The Tribunal had given number of reasons to discard Ex.A13 and also Exs.A14 to A20. The Tribunal, while dealing with all aspects, assessed the compensation and rightly awarded an amount of Rs.15,000/- with interest at 9% per annum from the date of petition till realisation. Therefore, I find no infirmity in the impugned order and the same is liable to be confirmed. The point is accordingly answered.

13. In the result, the appeal is dismissed confirming the order impugned. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

4th October, 2017
sj

Dr. SHAMEEM AKTHER, J