

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 824 OF 2010

JUDGMENT:

1. This is a claimant's Appeal, filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'). The claimant is the injured in a motor vehicle accident, who filed claim petition, under Section 166 of the Act, against the respondents 1 to 3. The Tribunal awarded an amount of Rs.99,400/-, as against the claim of Rs.3,50,000/-. Aggrieved by the inadequate compensation awarded by the Tribunal, the appellant preferred this Appeal for enhancement.

2. The Tribunal, on consideration of the evidence of P.Ws.1 to 3 and the documents viz, Ex.A-1 – attested copy of F.I.R. in Crime No.66 of 2005 of Atreyapuram Police Station, Ex.A-2 – attested copy of wound certificate, Ex.A-3 – attested copy of charge sheet, Ex.A-4 – disability certificate, Ex.A-5 – outpatient tickets, Ex.A-6 – discharge note, Ex.A-7 – bunch of medical bills, Ex.A-8 – bunch of x-rays, Ex.X-1 – case sheet and Ex.B-1 – copy of insurance policy, awarded compensation of Rs.99,400/- as against the claim of Rs.3,50,000/-. Being aggrieved by the same, the appellant is before this Court seeking enhancement.

3. The brief facts of the petition are that while the appellant was going along with two other persons in an Auto bearing No.AP5U 6817, and when the Auto reached near Ambedkar Statue, a girl aged three years came across the Auto. The driver of the Auto, in order to avert the accident to the girl, applied brakes, due to which

the Auto turned turtle. As a result of which the appellant fell down and sustained injuries on the right knee cap and all over his body. He was admitted in a private hospital and incurred medical expenses to a tune of Rs.70,000/-. He has sustained permanent disability due to injuries. He claimed compensation of Rs.3,50,000/-.

4. Respondents 1 and 2 did not file any counter. The 3rd respondent filed counter denying the liability contending that the accident did not occur due to rash and negligent driving of the driver of 1st respondent; that the driver of the crime vehicle was not having valid driving license at the time of accident.

5. Heard the arguments of learned counsel for the appellant. Though notices were served on respondents 1 and 2, who are the driver and owner of the crime Auto, none appears and there is no representation on their behalf. Si C. Mohan Krishna, who made appearance on behalf of respondent No.3 filed vakalat but did not advance his arguments.

6. Appellant is the injured. Having not satisfied with the award of Rs.99,400/-, he preferred this Appeal. P.W.3 is the Medical Officer, who treated the injured from 27.11.2005 to 06.12.2005. The Medical Officer found swelling, tenderness signs on the right knee of the appellant. According to him, the x-rays show that there was septic of right knee. A surgery was also done. P.W.2 is another Medical Officer, who examined the appellant and found compound injury measuring 3 x 2 c.ms. size over lower middle aspect of right knee joint exposure and there is loss of lower muscle. He treated the

injured from 07.11.2005 to 16.11.2005 and issued the disability certificate. According to him, the appellant suffered 20% disability.

7. This is the evidence of P.Ws.2 and 3, the medical officers, who treated P.W.1 – injured and there are medical certificates. According to them, P.W.1 suffered 25% and 40% disability, as per their certificates. The Tribunal has taken the disability at 10% as there appears some discrepancy in the findings of medical officers.

8. It is to be seen what the functional disability is. The appellant was a coolie aged at least 40 years. He underwent operation. There is likelihood of discharging his duties as a coolie. Due to injury, he may not be able to attend to his duties as before. The earning capacity also reduces due to disability. As his left knee joint is affected, there will be functional disability at least 20%.

9. The income of the appellant was taken as Rs.3,000/- p.m. and his annual income would be Rs.36,000/-. The relevant multiplier applicable to the age group of the appellant between 36 to 40 years is '15'. If calculated, the compensation for permanent disability comes to Rs.1,08,000/- ($\text{Rs.36,000/-} \times 15 \times 20/100$). The Tribunal has awarded Rs.10,000/- towards pain and suffering, which is enhanced to Rs.20,000/-. The Tribunal has awarded Rs.5,000/- towards transportation and attendant charges, Rs.5,000/- towards extra nourishment and Rs.32,600/- towards medical bills, which are found to be appropriate. The tabular form given below would show the enhancement particulars:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Permanent disability	Rs.46,800/-	Rs.1,08,000/-
02.	Shock, pain and suffering	Rs.10,000/-	Rs.20,000/-
03.	Transportation and attendant charges	Rs.5,000/-	Rs.5,000/-
04.	Extra nourishment and special diet	Rs.5,000/-	Rs.5,000/-
05.	Medical bills	Rs.32,600	Rs.32,600/-
TOTAL		Rs.99,400/-	Rs.1,70,600/-

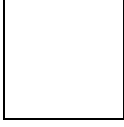
10. Accordingly, the Civil Miscellaneous Appeal is allowed, in part, modifying the impugned order passed by the Tribunal, by enhancing the compensation from Rs.99,400/- to Rs.1,70,600/- with interest at 7.5% p.a. from the date of petition till realization. The respondents are directed to deposit the compensation amount within two (2) months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw half of the amount, and the remaining amount can be withdrawn after expiry of the Appeal time.

11. As a sequel, pending miscellaneous petitions, if any, shall stand closed as infructuous. No order as to costs.

G. SHYAM PRASAD, J

Date:14.02.2017.
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