

THE HON'BLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A.No.2355 of 2005

JUDGMENT:

This appeal is filed by the appellant/claimant seeking enhancement of compensation awarded in O.P.No.328 of 2000 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, (Fast Track Court), Nizamabad, (for short 'the Tribunal') dated 28.04.2005.

2. The case of the appellant/claimant is that on 24.01.2000 while he was traveling in a lorry bearing No.A.P.7.V.765 from Hyderabad towards Nizamabad as a cleaner of lorry of respondent No.1 along with other labourers, when the lorry reached Anthampally village sivar chowrastha, on Hyderabad to Nagpur road, High Way No.7 at about 5.00 P.M., the driver of the lorry drove it in a rash and negligent manner with high speed and dashed against a parked lorry bearing No.A.P.9.V.5480 from its behind. In the aforesaid accident, the petitioner received fractured injuries on left leg at two places, injuries on right leg, head, chest and other parts of the body. Soon after the accident, he was shifted to Government Hospital, Kamareddy, and thereafter he was referred to Gandhi Hospital, Secunderabad, where his right leg was operated and rod was inserted. Thereafter, he took treatment in private hospitals and incurred heavy expenditure towards

medical treatment. Though, the claimant laid a claim for Rs.10,40,000/-, he restricted his claim to Rs.2,00,000/-.

3. The 2nd respondent-Insurance Company filed counter contending that the driver of the lorry bearing No.A.P.7.V.765 was not holding valid driving licence as on the date of accident and hence the Insurance Company is not liable to pay compensation to the claimant. It is further contended by the 2nd respondent that the compensation claimed by the claimant is highly excessive and exorbitant.

4. During the course of enquiry, the claimant examined himself as P.W.1, apart from examining the doctor as P.W.2 and got marked Exs.A1 to A9. On behalf of the 2nd respondent, no oral or documentary evidence was adduced.

5. I have considered the contentions of the learned Counsel for the appellant, learned standing Counsel for the 2nd respondent-Insurance Company and perused the impugned award passed by the Claims Tribunal and also the material available on record.

6. There is no dispute with regard to the finding of the Tribunal that the accident occurred due to the negligent driving of the crime vehicle based on the evidence of P.W.1 and Ex.A1, copy of FIR, and also Ex.A2 copy of charge sheet, and there is also no dispute regarding insurance of the crime vehicle under Ex.A8, copy of insurance policy with the 2nd respondent. Therefore, the findings of the Tribunal on these two aspects are accordingly confirmed.

7. As per Ex.A3-wound certificate and Ex.A4-discharge summary card, the appellant/claimant sustained fracture to left 1/3rd tibia and was treated for the same in the hospital from 25.01.2000 to 30.01.2000. The appellant/claimant could not be able to prove how he sustained fracture injuries to his left leg, skull, chest bone. Relying on the oral testimony of P.W.1, Exs.A3 and A4, the Tribunal awarded a sum of Rs.5,000/- for the fracture to left 1/3rd tibia; Rs.5,000/- towards medical expenses; Rs.5,000/- towards pain and suffering and Rs.4500/- towards loss of income for three months. Thus, in all the Tribunal awarded a sum of Rs.19,500/- towards compensation.

8. There is no dispute that the appellant/claimant sustained fracture of left 1/3rd tibia. In my view, the amount of Rs.5,000/- awarded by the Tribunal in respect of the injury to the left tibia is very meager. Therefore, I am inclined to enhance it to **Rs.15,000/-**. The amount of Rs.5,000/- awarded by the Tribunal towards pain and suffering appears to be very low and the same is hereby enhanced to **Rs.10,000/-**. The appellant/claimant was a labourer and it is evident from the material on record that he was forced to take bed rest in the house for more than three months without attending to any kind of work and that he has lost earnings for the said period of three months. Therefore, the amount of Rs.4,500/- which was awarded under the head of loss of earnings appears to be very low and it can be enhanced to **Rs.6,000/-**. Since the amount of **Rs.5,000/-** awarded by the Tribunal

towards medical expenses appears to be reasonable, I do not wish to enhance it. Thus, the appellant/claimant is entitled to get total compensation amount of **Rs.36,000/-**.

9. In the light of the discussion held above, the compensation amount of 19,500/- awarded by the Tribunal is enhanced to **Rs.36,000/-** (Rupees Thirty Six Thousands only) together with interest @ 9% per annum from the date of filing of claim petition till the date of realization.

Since the appellant/claimant seems to have traveled in the crime vehicle as a gratuitous passenger, the 2nd respondent-Insurance Company is not liable to pay the compensation amount. It is open to the appellant/claimant to recover the enhanced compensation amount from the owner of the vehicle.

The Appeal is partly allowed to the extent indicated above.

Miscellaneous applications, if any pending in this appeal, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

10.11.2017
Gsn