

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

MACMA.No. 303 of 2007

JUDGMENT:

This appeal is filed by the appellant/injured dissatisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-II Additional District Judge, Madanapalle in O.P.No.218 of 2005, dated 02.11.2006, and seeking enhancement of the compensation awarded by the Tribunal.

2. The learned counsel for the appellant would submit that though the petitioner had suffered two fracture injuries, the Tribunal has granted only Rs.25,000/- on this score, and not granted anything towards the loss of earnings. Further, the Tribunal has not considered Ex.A-5, Bunch of Medical Bills filed and marked on behalf of the appellant. Further, there is a disability certificate under Ex.A-6, which shows that the appellant/ claimant has suffered 30%disability, which is supported by the evidence of the Doctor as PW-2, which was not considered by the Tribunal, and ultimately the Tribunal has granted only an amount of Rs.50,000/-. Further, having assessed the compensation to a tune of Rs.75,000/- the Tribunal has deducted 1/3rd i.e., Rs.25,000/- towards the contributory negligence of the appellant, and ultimately, the learned counsel prayed for enhancement of the compensation for Rs.2,00,000/-, as claimed.

3. On the other hand, the learned counsel for the 2nd Respondent/ Insurance Company contended that the Tribunal has correctly assessed and granted the compensation on all scores and there was contributory negligence on the part of the appellant in traveling by hanging to the stand of the RTC Bus. Therefore, the learned counsel contended that the Tribunal has justified in deducting 1/3rd of the compensation towards the contributory negligence of the appellant, and there are no mitigating circumstances to enhance the compensation as contended by the learned counsel for the appellant, and ultimately prayed to dismiss the appeal.

4. In view of the rival contentions put forth, the points for determination are (1) whether the Tribunal has justified in deducting 1/3rd compensation, towards contributory negligence, and (2) whether the appellant is entitled for enhancement of compensation as prayed for.

5. As seen from the evidence on record, the appellant has pleaded that while he was climbing the ladder of the bus bearing No.AP10Z-5041, he was hit by the lorry bearing No.AP03T-2648, and there was rash and negligence on the part of the driver of the lorry causing the accident. In the evidence, the petitioner/injured stated that he was traveling in the RTC Bus. Therefore, the pleadings and the evidence of the appellant/injured are inconsistent. Ex.A.1, copy of the FIR and the investigation in the

criminal case reveals that at the time of accident, the appellant was traveling by holding the ladder of the RTC Bus. What is pleaded by the appellant is quite different from the record and oral evidence. Therefore, after considering the entire material on record, the Tribunal has assigned number of reasons and concluded that there was contributory negligence on the part of the appellant and deducted 1/3rd of the compensation as such. No different view can be substituted on this aspect and the same is liable to be confirmed.

6. As far as the amount of compensation is concerned, the Tribunal held that the appellant has suffered two grievous injuries i.e., fractures over his left tibia and left wrist. There is nothing to dispute the same. Therefore, relying on the evidence of PWs.1 and 2, and the other documents, the Tribunal has granted compensation of Rs.30,000/- towards pain and suffering; Rs.25,000/- towards the injuries, and another amount of Rs.20,000/- for medical expenses, extra nourishment, transportation and other expenses. The contention of the appellant is that there was a bunch of medical bills under Ex.A-5, and the Tribunal has not considered the same. Admittedly, the appellant has not filed any prescriptions relating to the said medical bills. Thus, there is no corroborative evidence to show that the appellant has spent money for purchasing the medicines under Ex.A-5, bunch

of medical bills. However, the Tribunal has granted some amount on this score, and no interference is warranted in this aspect.

7. The learned counsel for the appellant also contended that the petitioner has suffered 30% disability, which is evident from the evidence of PW-2 as well as Ex.A-6, permanent disability certificate of the appellant. No doubt, PW-2 has spoken about the genuineness of the certificate and also that the petitioner has suffered 30% disability due to the fractures suffered in the accident, but it is the Medical Board, which is the competent authority to assess the disability. But, no such exercise has been taken in this case. However, still the Tribunal has granted compensation for the injuries, pain and suffering, medical expenses etc. Therefore, no other amount is required to be granted under the head of permanent disability, as there is no legally acceptable evidence on record.

8. So far as the loss of earnings of the appellant is concerned, it is evident from the record that no amount is granted towards the loss of earnings of the appellant. The contention of the appellant is that he was a milk vendor as well as an agriculturist, and thus earning Rs.135/- per day by way of selling the milk and Rs.45,000/- per annum from agriculture. Admittedly, as per the evidence on record, the appellant was aged about 38 years at the time of accident. Though there is no evidence that the appellant was earning Rs.135/- per day apart from agricultural income, but it can

be safely concluded that due to the accident, he did not work for a considerable period, which can be asessed for a period of six months, and his loss of earning can be taken as Rs.3,000/- per month. So for the period of six months, the income of the appellant comes to Rs.18,000/- i.e., @Rs.3,000/- per month for six months, and out of the said income, 1/3rd is liable to be deducted towards contributory negligence for the occurrence of the accident. Therefore, the petitioner is entitled for Rs.12,000/- towards loss of earnings, and the same can be awarded in this appeal, apart from the amount awarded by the Tribunal.

9. Therefore, the appeal is partly allowed, and the compensation is enhanced to Rs.62,000/- from Rs.50,000/- awarded by the Tribunal, with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization. The 2nd respondent is directed to deposit the compensation with interest as directed above, and on such deposit the appellant is at liberty to withdraw the entire amount. The other findings of the Tribunal shall remain unchanged.

10. In the result, the appeal is partly allowed to the extent indicated above. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

(DR. SHAMEEM AKTHER, J)

July 21, 2017
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