

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2366 OF 2005

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellant-petitioner, aggrieved by the order dated 23.06.2005 passed in M.V.O.P. No.799 of 2003 by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-X Additional District Judge (Fast Track Court) Guntur at Narasaraopet (for short, 'the Tribunal').

2. Heard the learned counsel for the appellant-petitioner, learned standing counsel for the 2nd respondent-insurer and perused the record. The Appeal against the 1st respondent-owner of the Maruthi Zen Car bearing No.AP28-AB-2266 (for short, 'the crime vehicle') was dismissed for default *vide* order of this Court on 05.01.2012.

3. Learned counsel for the appellant-petitioner would submit that the appellant suffered two grievous injuries and there is record to show the same. There is also evidence to believe that the appellant is a Railway Gangman, drawing a monthly salary of Rs.5,487.25 p.s., sustained injuries due to the rash and negligent driving of the driver of the crime vehicle, incurred medical expenses to a tune of Rs.15,000/- and could not attend the work for six months but the Tribunal without taking into consideration the medical record, monthly earnings, and the medical bills produced by the appellant, granted a compensation of Rs.40,000/- against the original claim of Rs.1,25,000/-, which is meager and ultimately prayed to enhance the compensation.

4. On the other hand, learned standing counsel for the 2nd respondent-insurer would contend that there is no evidence and certificate to prove the employment of the appellant as Railway Gangman, his

monthly earnings as Rs.5,487/-, medical record to show that the appellant incurred medical expenses to a tune of Rs.15,000/- and as such the appellant failed to produce the disability certificate. However the Tribunal taking into consideration the nature of injuries suffered by the appellant and basing on the evidence of P.W.2, doctor, assessed the disability suffered by the appellant as 25% and awarded a compensation of Rs.40,000/- with interest at the rate of 9% p.a. which is in accordance with law and ultimately prayed to dismiss the Appeal.

5. In the circumstances put forth by both parties, the point for determination is whether the appellant-petitioner is entitled for enhancement of compensation?

6. **POINT**: Admittedly, there is no dispute with regard to the appellant suffering injuries due to the rash and negligent driving of the driver of the crime vehicle on 25.04.2003 at 05:30 a.m. There is also no dispute with regard to existence of valid insurance of the crime vehicle with the 2nd respondent-insurer as on the date of accident and as such violation of terms and conditions of the insurance policy. The only point requires to be decided in the case on hand is with regard to enhancement of compensation.

7. The appellant, to substantiate his claim, examined himself as P.W.1 and got examined P.W.2, doctor, and got marked Exs.A-1 to A-5 and Exs.X-1 and X-2. Ex.A-1 is the certified copy of F.I.R; Ex.A-2 is the certified copy of charge sheet, Ex.A-3 is the certified copy of wound certificate, Ex.A-4 are the prescriptions and Ex.A-5 is the x-ray film; Ex.X-1 are x-ray films four in number and Ex.X-2; is the case sheet.

8. As seen from the evidence on record, the appellant did not produce any certificates showing his employment and the monthly earnings before

the Tribunal. The documents filed on his behalf only reveals that the appellant suffered injuries and undertook treatment for the injuries sustained by him in the accident. The Tribunal while dealing with the subject matter held that there is no legally acceptable evidence to hold that the appellant was a Railway Gangman, earning an amount of Rs.5,600/- p.m., which finding is based on record and there is nothing to take a different view. Admittedly, no disability certificate was filed before the Tribunal showing 25% disability suffered by the appellant. Therefore, it is not proper to take the disability suffered by the appellant as 25%. As per the evidence of P.W.1, Ex.A-3 is the wound certificate and Ex.A-5 is the x-ray film and other medical record reveals that the appellant suffered fracture to his humerus and fibula, which are grievous in nature, and the appellant was hospitalized for taking treatment to those injuries. As per the evidence on record, the appellant was aged 42 years as on the date of accident. Though there is no certificate to prove his monthly earnings, it cannot be said that the appellant was not an earning member and, his monthly earnings can be taken as Rs.3,000/- p.m. and the evidence on record reveals that he could not attend the work for six months, an amount of Rs.18,000/- is awarded towards his loss of earnings. The appellant suffered two grievous injuries as such he is entitled for a compensation of Rs.30,000/- towards injuries, pain and suffering. As the appellant could not attend the work for six months, he might have taken treatment for considerable period, for which an amount of Rs.10,000/- is awarded towards medical expenses, transportation and extra nourishment.

9. The following is the tabular form showing the amount of compensation awarded by the Tribunal and modified by this Court, if any, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Modified by this Court
01.	Disability and loss of earning capacity	Rs.37,500/-	Rs.30,000/-
02.	Medical Expenses, Transportation and Extra nourishment	Rs.2,000/-	Rs.10,000/-
03.	Pain and suffering	Rs.500/-	---
04.	Loss of earnings	----	Rs.18,000/-
TOTAL		Rs.40,000/-	Rs.58,000/-

10. In the result, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.40,000/- to Rs.58,000/-. The rate of interest awarded by the Tribunal at the rate of 9% p.a. is on higher side and in view of the principle laid down by the Apex Court in ***Rajesh and others Vs. Rajbir Singh and others***¹, the appellant is entitled to interest on the compensation amount of Rs.58,000/- at the rate of 7.5% p.a. from the date of filing of petition till the date of realization. On deposit, the appellant-petitioner is permitted to withdraw the entire amount. The other conditions imposed by the Tribunal remain unchanged.

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

Dr. SHAMEEM AKTHER, J

Date: 12.10.2017.
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¹ 2013 ACJ 1403

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