

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.2589 OF 2005

JUDGMENT:

Claimant in O.P.No.251 of 2002 on the file of the Motor Accident Claims Tribunal – cum – Chief Judge, City Civil Court, Hyderabad is the appellant in the present appeal filed under Section 173 of the Motor Vehicles Act, 1988. The present appeal is filed, seeking enhancement of the compensation amount awarded by the Tribunal.

2. Heard Sri Molugu Krishna Reddy, learned counsel for the appellant, Sri Adnan Mahmood, learned counsel for respondent No.1, and Smt S.A.V.Ratnam, learned Standing Counsel for respondent No.2.

3. In the accident that took place on 27.09.2001, the appellant herein sustained injuries. Seeking compensation, the appellant herein approached the Tribunal by way of filing O.P.No.251 of 2002.

4. Before the Tribunal, in order to substantiate his case, the claimant examined himself as P.W.1 apart from examining P.W.2, Doctor in Yashoda Hospital, and filed Exs.A-1 to A-11. Respondent No.1 herein examined himself as R.W.1, but nobody was examined on behalf of the Insurance Company and no documents were marked.

5. On the basis of the material available, the Tribunal framed the following points for determination:

“1. Whether the accident is due to the rash and negligent driving of the driver of the Indica Car bearing No.AP 28 AB 7272?

2. Whether the petitioner is entitled for compensation and if so to what amount and from whom?”

6. On Point No.1, the Tribunal categorically found that the accident took place due to the rash and negligent driving of the driver of the offending vehicle i.e., Indica Car bearing No.AP 28 AB 7272. While dealing with Point No.2 as to the quantum of compensation, the Tribunal awarded a total sum of Rs.88,490/- with interest at the rate of 12% per annum from the date of petition till the date of realisation. The Tribunal quantified the income per month as Rs.1,500/- and awarded a sum of Rs.4,500/- under the head “Loss of Earnings”, Rs.2,000/- towards transportation charges, Rs.27,990/- towards medicines and additional sum of Rs.15,000/- towards charges for second surgery to remove the plates, and in total, towards medical expenses, the Tribunal awarded a sum of Rs.42,990/-, and another sum of Rs.12,000/- towards pain and suffering. The Tribunal also fixed a sum of Rs.27,000/- towards disability while treating the same as 10%.

7. According to the learned counsel for the appellant, the amount arrived at by the Tribunal towards income i.e., Rs.1,500/- per month is unreasonable and as per the judgment of the Hon’ble Apex Court in the case of **LATA WADHWA AND OTHERS Vs.**

STATE OF BIHAR AND OTHERS¹, the minimum income should be taken as Rs.3,000/- per month. In the said judgment, the Hon'ble Apex Court categorically held that the minimum income should be calculated at the rate of Rs.3,000/- per month. Therefore, the Tribunal should have awarded Rs.9,000/- under the said head for three months.

8. Another point urged by the learned counsel for the appellant is that totally discarding the evidence of P.W.2, the Consultant Orthopaedic Surgeon in Yashoda Hospital, the Tribunal arrived at a disability at 10% and awarded a paltry sum of Rs.27,000/- under the said head. In fact, in his evidence, P.W.2, in clear terms, deposed that the disability is 20%. The Tribunal also held that his evidence is corroborated with the documents – Exs.A-3 and A-4. In the absence of any material to discredit the evidence of P.W.2, the Tribunal should not have discarded his evidence as regards the disability and the Tribunal ought to have calculated by treating the disability as 20%, as deposed by P.W.2. If the annual income of the claimant is taken as Rs.36,000/- and disability is taken as 20%, as deposed by P.W.2, claimant would be entitled to a sum of Rs.61,200/- under the said head.

9. For the aforesaid reasons, the appeal is allowed in part enhancing the compensation under the head “Loss of Earnings” from Rs.4,500/- to Rs.9,000/- and the amount towards “Disability” is enhanced from Rs.27,000/- to Rs.61,200/-.

¹ (2001) 8 Supreme Court Cases 197

10. In the result, the claimant is entitled for the following amounts:

Towards Loss of Earnings	:	Rs. 9,000/-
Towards Transportation	:	Rs. 2,000/-
Towards Medical Expenses	:	Rs. 42,990/-
Towards Pain and Suffering	:	Rs. 12,000/-
Towards Disability	:	Rs. 61,200/-
Total		----- Rs.1,27,190/- -----

In addition to the above, on the enhanced compensation amounts, the claimant/appellant is entitled to interest at 7.5% per annum. There shall be no order as to costs.

11. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

Date : 07.12.2017
AMD

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