

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.506 of 2006

JUDGMENT:

Aggrieved by the grant of compensation of Rs.78,800/- as against a claim of Rs.1,60,000/- vide order, dated 30.09.2005, passed in M.V.O.P.No.558 of 2004 by the Chairman, Motor Accident Claims Tribunal-cum-VIII Additional District Judge (FTC), Guntur ('the Tribunal', for brevity), the claimant preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity), seeking enhancement of compensation.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellant-claimant would contend that appellant-claimant suffered four grievous injuries and one simple injury in the subject accident occurred on 01.05.2004. He took treatment for the same for months together. The appellant-claimant was 27 years old as on the date of the subject accident. He was a driver and earning Rs.3,000/- per month. The Tribunal took the monthly income of the appellant-claimant as Rs.1,500/-, which is meagre. The Tribunal assessed and granted a compensation of Rs.64,800/- towards loss of earnings, which is meagre. The Tribunal granted meagre compensation under conventional heads and ultimately prayed to enhance the compensation as claimed.

4. On the other hand, the learned Standing Counsel for the 2nd respondent-Insurance Company would contend that the Tribunal

had rightly taken the monthly income of the appellant-claimant as Rs.1,500/-. The appellant-claimant filed the claim petition under Section 163-A of the Act but not under Section 166 of the Act. There is no evidence to the effect that the appellant-claimant sustained 20% disability due to the accidental injuries. The Tribunal granted just and reasonable amount as compensation under different heads. There are no circumstances to enhance the compensation and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. It is not in dispute that the appellant-claimant sustained injuries in the subject accident occurred on 01.05.2004, due to rash and negligent driving of the driver of the lorry bearing registration No.AP-20-T-4329. The point that arises for determination in this appeal is whether the appellant-claimant is entitled for enhancement of compensation as claimed.

6. As per the evidence of P.W.2-Dr.G.Vara Prasad, Assistant Professor of Orthopaedics, Government General Hospital, Guntur, the appellant-claimant suffered the following injuries in the subject accident occurred on 01.05.2004.

1. Fracture shaft of femur right
2. Fracture both bones right leg communicated
3. Fracture distal and have fifth metacarpal on right side.
4. Fracture inferior pubic ramus.

As per the evidence of P.W.1 (appellant-claimant), he was 27 years old as on the date of the subject accident. He further deposed that he was working as a driver and was earning Rs.3,000/- per month. No rebuttal evidence has been adduced by the 2nd respondent-Insurance Company to disprove the same.

The Tribunal took the monthly income of the appellant-claimant as Rs.1,500/- and the disability sustained by him due to the accidental injuries as 20%. Admittedly, the appellant-claimant has not subjected himself for examination before the competent Medical Board in the District Headquarters Hospital to assess the disability sustained by him in the subject accident. In view of the same, the Tribunal is justified in taking the disability sustained by the appellant-claimant as 20%. The Tribunal took the monthly income of the appellant-claimant as Rs.1,500/-, which is lower side. It ought to have taken the monthly income of the appellant-claimant as Rs.2,500/-. Thus, the total loss of earnings would come to Rs.1,02,000/- ($\text{Rs.2,500/-} \times 12 \times 17 \times 20\%$) and the appellant-claimant is entitled for the said amount under the head loss of earnings. The Tribunal awarded a compensation of Rs.5,000/- for four fractures sustained by the appellant-claimant, Rs.1,000/- towards one simple injury, Rs.3,000/- towards medical expenses and Rs.5,000/- towards pain and suffering. The compensation granted by the Tribunal under the aforementioned heads is inadequate and this Court deems it appropriate to grant a compensation of Rs.38,000/- under the aforementioned heads. Thus, the appellant-claimant is entitled for a compensation of Rs.1,40,000/- ($\text{Rs.1,02,000/-} + \text{Rs.38,000/-}$). The Tribunal awarded interest @ 9% per annum on the amount awarded as compensation from the date of petition till the date of deposit. This Court is inclined to award interest @ 7.5% per annum on the enhanced amount of compensation from the date of petition till realisation.

7. Accordingly, this appeal is allowed in part, modifying the order, dated 30.09.2005, passed in M.V.O.P.No.558 of 2004 by the Tribunal, enhancing the compensation payable to the appellant-claimant from Rs.78,800/- to Rs.1,40,000/-. The enhanced amount of compensation carries interest @ 7.5% per annum from the date of petition till realisation. On deposit of the enhanced compensation, the appellant-claimant is permitted to withdraw the same along with the interest accrued thereon. Other terms of the Order under challenge remain unaltered.

Pending Miscellaneous Petitions, if any, shall stand closed.

There shall be no order as to costs.

03rd October, 2018
Bvv

Dr. SHAMEEM AKTHER, J

