

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2241 of 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the appellant-claimant aggrieved by the order dated 21.05.2003 in O.P.No.1094 of 2000 on the file of the Motor Accident Claims Tribunal-cum-Additional Special Judge for SPE & ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal').

2. Heard the learned counsel for appellant-claimant, the learned Standing Counsel for respondent-Insurance Company and perused the record.

3. Learned counsel for the appellant-claimant would contend that the Tribunal had granted meagre compensation on different heads and did not grant any compensation for the injuries suffered by the appellant and ultimately prayed to enhance the compensation.

4. Learned Standing Counsel for the respondent-Insurance Company would contend that the Tribunal has taken the oral and documentary evidence into consideration and granted just and reasonable compensation. He also contends that no doctor was examined to prove the injuries of the appellant. Hence, there are no grounds to enhance the compensation and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the only point that arises for determination is, whether the appellant is entitled for enhancement of compensation?

6. There is no dispute with regard to the injuries sustained by the appellant-claimant in a motor accident that occurred on 23.02.2000 due to the rash and negligent driving of the driver of van bearing No.AP 13T 820. The only dispute is with regard to quantum of compensation.

7. As per the material placed on record, the appellant-claimant was 13 years old at the time of occurrence of accident i.e., on 23.02.2000. The evidence of P.W.1, who is the father of the appellant, shows that he shifted the appellant to Gandhi Hospital from accident spot, thereafter to NIMS Hospital and the appellant sustained Grade-III compound fracture of shaft of right femur and two operations were performed in the NIMS Hospital, where wound debridement and ORIF and OC plating was done. In support of his statement, Ex.A3-certified copy of Medico Legal record, Ex.A4-discharge certificate, Ex.A5-outpatient card, Ex.A6-stay pass and 24 OP tickets issued by NIMS Hospital were marked. As per the medical record, the appellant was admitted in the NIMS Hospital. There was compound fracture to the right shaft femur and the bone is visible outside. The said injury was diagnosed as grievous. There is record to show the treatment taken for the fracture injury. Taking the same into consideration, the Tribunal granted an amount of Rs.36,260/- towards medical expenses, Rs.10,000/- towards pain and suffering, Rs.1,000/- towards extra nourishment and Rs.500/-

towards transport to hospital. In total, the Tribunal granted compensation of Rs.47,760/- with interest @ 9% per annum.

8. The Tribunal had not recorded a clear finding with regard to the injuries suffered by the appellant. The appellant suffered Grade-III compound fracture of shaft of right femur. Considering the same, the appellant is entitled for an amount of Rs.20,000/- for the said fracture. Since the Tribunal had granted adequate and just compensation on other heads, there is nothing to take a different view and the amount granted thereon is liable to be confirmed. In all, the appellant is entitled for a sum of Rs.67,760/- towards compensation. The enhanced compensation carries interest @ 7.5% per annum.

9. In the result, the appeal is partly allowed modifying the order, dated 21.05.2003, passed by the Tribunal in O.P.No.1094 of 2000 enhancing the compensation from Rs.47,760/- to Rs.67,760/- with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit. The other terms of the order under challenge remain unaltered. On such deposit, the appellant is permitted to withdraw the entire amount along with interest accrued thereon.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

Dr. SHAMEEM AKTHER, J

Date: 07.08.2018
ssp