

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3139 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/claimant aggrieved by the grant of compensation of Rs.4,61,800/- with proportionate costs and interest at 9% per annum from the date of petition till the date of realisation as against a claim of Rs.7,00,000/-, by the learned Chairman, Motor Accident Claims Tribunal – cum - I Additional District Judge, Chittoor (for short, “the Tribunal”) *vide* order, dated 12.08.2005, passed in M.V.O.P.No.99 of 1998.

2. Heard the submissions of the learned counsel appearing for the appellant/claimant, the learned Standing Counsel for the National Insurance Company Limited appearing for respondent No.2, and perused the record.

3. Learned counsel for the appellant/claimant would contend that the claimant suffered four grievous injuries and several simple injuries; that the claimant suffered 60% disability and there is evidence of doctors to that effect; that the claimant underwent four operations; that skin grafting and skin debridement were done to the claimant on several occasions and he had also undergone blood transfusion; that the Tribunal had not taken disability at 60% to assess the loss of future earnings but had taken only at 30% disability, which is contrary to the medical evidence on record; that the Tribunal did not grant just and reasonable compensation for the pain and suffering and ultimately, prayed to allow the appeal. In support of his contention, he relied on a

decision reported in **Jagdish v. Mohan and others**¹ wherein for injuries, the Apex Court awarded an amount of Rs.2,00,000/- for pain, suffering and loss of amenities.

4. On the other hand, learned Standing Counsel appearing for the National Insurance Company Limited representing respondent No.2 would contend that there is no certificate from the Medical Board to show that the claimant suffered disability of 60%, however, the Tribunal took the disability at 30% and awarded just and reasonable compensation for loss of future earnings and further, the Tribunal considered the nature of injuries, treatment and other aspects of the case and granted just and reasonable compensation on different heads; that the findings of the Tribunal are based on evidence and medical record; that there is nothing to take a different view and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on either side, the point that falls for determination is:

“Whether the appellant/claimant is entitled for enhancement of compensation?”

6. **POINT:-** There is no dispute with regard to the claimant suffering injuries in a motor vehicle accident that occurred on 07.03.1996 due to the rash and negligent driving of the driver of the jeep bearing No.AIK-1271. The only dispute is with regard to enhancement of compensation.

7. While dealing with the matter, the Tribunal held that the claimant suffered severe injuries and he had undergone four

¹ 2018 (3) ALD 55 (SC)

operations, and skin grafting and skin debridement were done several times and he had also undergone blood transfusion. Further, relying on Ex.A-2 – certified copy of wound certificate, the Tribunal held that the claimant suffered four lacerations, two abrasions of different sizes. The X-ray shows fracture of upper 1/3rd of fibula and the X-ray of left leg A.P. view shows communitied fracture of middle of 1/3rd both bones of left leg and X-ray of right wrist of A.P. lateral view also shows fracture and the said four injuries are grievous in nature. There is also record to show that the claimant underwent four operations and the treatment taken by him. There is also evidence of skin grafting and skin debridement on several occasions. The Tribunal, while considering the entire medical bills and the evidence of the doctors, granted Rs.2,53,000/- towards medical expenses basing on Ex.A-5. Examining the nature of injuries and the consequences arose therefrom, the Tribunal granted Rs.50,000/- for pain and suffering on account of the four grievous injuries and one simple injury. The Tribunal had considered the medical bills under Ex.A-6 also and granted Rs.15,000/- towards medical expenses. Further, relying on Exs.A-7 and A-8, the Tribunal granted Rs.15,000/- for transportation and Rs.1,000/- for hotel bills respectively. Further, the Tribunal granted an amount of Rs.9,000/- for loss of past earnings for three months i.e., at the rate of Rs.3,000/- per month. While assessing the loss of earnings, the Tribunal had discussed the evidence of P.W.6 - Sarpanch and observed that merely because the claimant was possessing Ac.12.50 cents, it cannot be said that he could make Rs.60,000/- to Rs.70,000/- per annum. Having considered the

other evidence also, the Tribunal had rightly taken the monthly earnings of the claimant as Rs.3,000/-. Admittedly, the claimant was not examined by the Medical Board to obtain disability certificate. However, the Tribunal considered the disability at 30% and granted Rs.1,18,800/- towards loss of future earnings. While determining the aforementioned compensation on different heads, the Tribunal had taken into consideration all the factors governing and decided the compensation. Admittedly, in the decision referred supra, the Apex Court was pleased to grant a compensation of Rs.2,00,000/- for the pain, suffering and loss of amenities. While considering the award of compensation for the injuries and pain and suffering, the nature of injuries and the consequences arose therefrom and the living conditions in a particular area have to be taken into consideration. The Tribunal, having taken all those factors into consideration, granted a total compensation of Rs.4,61,800/- with proportionate costs and interest at 9% per annum from the date of petition till the date of realisation as against a claim of Rs.7,00,000/-. There is justification on the part of the Tribunal in doing so. There are no circumstances to enhance the compensation. The appeal is devoid of merit and is liable to be dismissed.

8. Accordingly, this appeal is dismissed. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 28.08.2018
AMD

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