

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2742 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.1,800/- as against a claim of Rs.1,00,000/-, by the learned Chairman, Motor Accident Claims Tribunal – cum – VII Additional District Judge, East Godavari District at Kakinada (for short, “the Tribunal”) *vide* order, dated 07.03.2005, passed in M.V.O.P.No.316 of 2001.

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

3. Learned counsel for the appellant/claimant would contend that the claimant suffered I.C. fracture to left neck of fumer and he had taken treatment with P.W.2 in a private hospital where he incurred medical expenses of Rs.16,800/-, but the Tribunal, relying on the judgment rendered in the criminal case relating to the said accident, held that the claimant did not suffer any grievous injury and suffered only simple injury and ultimately, granted only a compensation of Rs.1,800/- as against a claim of Rs.1,00,000/-, and the same is meagre; that the Tribunal erred in not considering the X-ray reports, which clearly show the screws fixed to the bones of the claimant and the same is spoken by P.W.2; that the Tribunal failed to consider the evidence of P.W.1 as well as the evidence of P.W.2 – Doctor and erroneously held that

the claimant suffered only simple injury and ultimately, prayed to enhance the compensation and allow the appeal as prayed for.

4. On the other hand, learned Standing Counsel for the New India Assurance Company appearing for respondent No.2 would contend that the Tribunal had analysed the entire evidence on record and also evaluated the evidence of one Dr.K.Appalacharyulu, who deposed before the learned II Special Judicial II Class Magistrate, Kakinada during trial in C.C.No.107 of 2003 with regard to the simple injury suffered by the claimant; that there is no record to show that the claimant suffered grievous injury and incurred Rs.16,800/- towards medical expenses; that the Tribunal had taken all the factors into consideration and rightly assessed the compensation at Rs.1,800/-, which is just and reasonable; that there are no circumstances to interfere with the same and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both the counsel, the points that fall for determination are:

“1. Whether the appellant/claimant suffered I.C. fracture to left neck of humer in the subject accident and he underwent operation to correct the said injury on 13.07.2000 and whether he incurred medical expenses of Rs.16,800/- as contended? and

2. Whether the claimant is entitled for enhancement of compensation as claimed?”

6. **POINT Nos.1 & 2:-** There is a clear evidence of P.W.1 that he suffered injuries in a road accident that occurred on 08.07.2000 due to the rash and negligent driving of the driver of Bajaj Chetak Scooter bearing No.AP 5N 9498. P.W.1 categorically stated that he

gave a report to the police on 10.7.2000. He also stated that he suffered numbness in his left leg and after sometime, he was relieved from the said numbness and he took some pain killers, but by the next day morning, he had suffered unbearable pains in his left leg. Then he went to Government General Hospital, Kakinada where the doctors took X-rays and informed that he had a fracture of left leg and advised him to admit in hospital. As he felt inconvenient in the Government General Hospital, he joined in a private hospital situated at Bhanugudi Centre. He underwent a surgery in a private nursing home and a steel rod was inserted. He incurred medical expenses of Rs.16,800/-. To substantiate the same, the claimant also examined Dr. K.L.Sampath Kumar as P.W.2 and got marked Ex.A-1 – attested copy of F.I.R, Ex.A-2 – medical record including X-rays and Ex.A-3 – certificate issued by Bharani Hospital.

7. P.W.2 - Dr. K.L.Sampath Kumar, who is a private practitioner, has supported the evidence of P.W.1 and stated that the claimant suffered I.C. fracture to left neck of humer and Dr.C.Hanumantha Rao conducted operation on 13.07.2000 with screw fixation on left hip and the claimant was discharged from the hospital on 26.07.2001. P.W.2 also spoke about the genuineness of the medical record filed before the Court.

8. The trial Court relied on the evidence of Dr.K.Appalacharyulu according to whom, the claimant suffered only simple injury on the left hip point and there is no fracture injury. In these circumstances, it is relevant to state that sometimes, it is not possible to identify the injury at the first

instance and thereafter, it is quite possible to identify those injuries by the expert dealing with the subject. Merely because Dr.K.Appalacharyulu did not speak that the claimant suffered grievous injury, the specific evidence of P.Ws.1 and 2 and the documents – Exs.A-2 and A-3 cannot be discarded. In view of the evidence of P.Ws.1 and 2 and Exs.A-2 and A-3, it can safely be concluded that the claimant suffered I.C. fracture to left neck of fumer and he had taken treatment as inpatient in Bharani Hospital. There is also ample record to show that the claimant incurred medical expenses of Rs.16,800/-. Considering these circumstances, the claimant is entitled for a compensation of Rs.20,000/- for the fracture injury and pain and suffering. The claimant is a senior citizen. He is granted an amount of Rs.5,000/- towards attendant charges and loss of earnings, Rs.2,000/- towards extra nourishment and Rs.16,800/- towards medical expenses and in all, the claimant is entitled for a compensation of Rs.43,800/- and the same is rounded to R.44,000/- (Rupees forty four thousand only) together with interest at the rate of 7.5% per annum throughout i.e., from the date of petition till the date of realisation on the entire compensation.

9. Accordingly, this appeal is allowed in part modifying the order, dated 07.03.2005, passed in M.V.O.P.No.316 of 2001 by the Tribunal, enhancing the compensation from Rs.1,800/- to Rs.44,000/-. On deposit of the compensation, the appellant/claimant is permitted to withdraw the entire amount along with the accrued interest. There is no change in the other directions given by the Tribunal. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 26.07.2018
AMD



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