

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3708 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 17.10.2005 in O.P.No.177 of 2002 on the file of the Motor Accident Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Adilabad at Asifabad (for short 'the Tribunal').

2. Heard the learned counsel for appellant-claimant, the learned Standing Counsel for 2nd respondent-Oriental Insurance Company Limited, the learned Standing Counsel for 3rd respondent-United India Insurance Company Limited and perused the record.

3. Learned counsel for the appellant-claimant would contend that though the appellant suffered 40% disability, the Tribunal had granted only Rs.20,000/- towards compensation, which is meagre and ultimately, prayed to enhance the same.

4. On the other hand, the learned Standing Counsel for respondent No.2-Insurance Company would contend that there was negligence on the part of the driver of auto bearing registration No.AP-15-T/8343 in causing the subject accident. The Tribunal fastened the liability against the 2nd respondent-Insurance Company, which is erroneous. Further, the Tribunal granted excess compensation and ultimately, prayed to set aside the impugned order passed against the 2nd respondent-Insurance Company.

5. The learned Standing Counsel for respondent No.3-Insurance Company would contend that there was rashness and

negligence on the part of the driver of jeep bearing registration No.MH-29-B-1382. The same is evident from the oral evidence available on record. The Tribunal had rightly fastened the liability against the 2nd respondent. There are no circumstances to interfere with the impugned order and ultimately, prayed to dismiss the appeal.

6. In view of the submissions made by both sides, the points that arise for determination are as follows:-

1. Whether there was rashness and negligence on the part of the driver of jeep bearing registration No.MH-29-B-1382 or on the part of the driver of auto bearing registration No.AP-15-T/8343?
2. Whether the appellant-claimant is entitled for enhancement of compensation?
3. Whether the impugned order is liable to be set aside?
7. POINT No.1:- There is specific evidence of P.W.1 with regard to the injuries suffered by the appellant-claimant. There is clear evidence that the accident occurred on 08.08.2001 due to the rash and negligent driving of the driver of jeep bearing registration No.MH-29-B-1382. Ex.A1-copy of FIR and other documents reveal the same. Under these circumstances, the Tribunal rightly held that the subject accident occurred due to the rash and negligent driving of the driver of said jeep. There is nothing to take a different view. Point No.1 is answered accordingly.

8. POINT Nos.2 and 3:- As per the evidence of P.W.1 and Ex.A2-wound certificate, the appellant suffered the following injuries:-

1. Deformity of left lower limb, middle 1/3rd open clavicle deep left,

2. Lacerated wound over left arm above wrist, bleeding, lack of movement of left little finger, ring finger, clinic and
3. contusion over right knee.

For the above injuries and the consequences arose therefrom, the Tribunal granted compensation of Rs.20,000/- to the appellant under different heads which is on lower side. Hence, the appellant is entitled for an amount of Rs.8,000/- in addition to the above said compensation. In total, the appellant-claimant is entitled for compensation of Rs.28,000/- (Rs.20,000/- + Rs.8,000/-) with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit. Point Nos.2 and 3 are answered accordingly.

9. In the result, the appeal is partly allowed modifying the order, dated 17.10.2005, passed by the Tribunal in O.P.No.177 of 2002 enhancing the compensation from Rs.20,000/- to Rs.28,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit. On deposit of the enhanced compensation, the appellant is entitled to withdraw the same along with the interest accrued thereon. The other directions in the impugned order remain unaltered.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Dr. SHAMEEM AKTHER, J

Date: 20.09.2018
ssp