

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.270 OF 2006 & 5076 OF 2008

COMMON JUDGMENT:

Since the facts of the case, issues, parties, and the award under challenge in these appeals are one and the same, both the appeals are being disposed of by way of this common judgment.

2. Challenging the order, dated 09.03.2005, passed in O.P.No.787 of 2003 by the Chairman, Motor Accident Claims Tribunal – cum – III Additional District Judge, Karimnagar (for short, “the Tribunal”), the New India Assurance Company Limited preferred M.A.C.M.A.No.270 of 2006 seeking to set aside the said award and the claimant in the said O.P. preferred M.A.C.M.A.No.5076 of 2008 seeking enhancement of compensation.

3. Heard the learned counsel for both sides and perused the record. For clarity and convenience, the parties are hereinafter referred to, as per their array before the Tribunal.

4. Learned Standing Counsel appearing for the New India Assurance Company would contend that the Tribunal had awarded compensation of Rs.6,66,200/- as against an amount of Rs.9,00,000/- and the same is excessive; that the Tribunal had granted compensation towards injuries as well as the permanent disability and the Tribunal ought not to have awarded any amount under the head of injuries; that the Tribunal awarded interest at the rate of 9% per annum, which is untenable in law, and ultimately, prayed to reduce the compensation.

5. On the other hand, learned counsel for claimant would contend that the Tribunal had not applied the proper multiplier; that the Tribunal had not taken the correct gross salary; that in view of the occurrence of accident and injuries, the services of the petitioner from Singareni Collieries Company Limited were terminated and hence, prayed to grant compensation towards 100% loss of earnings and other heads, and allow the appeal as prayed for.

6. In view of the submissions made by the learned counsel for both sides, the short question that falls for consideration is:

“Whether the compensation amount awarded by the Tribunal be reduced or enhanced and if so, to what extent?”

7. **POINT:-** As per the medical evidence placed on record, the claimant suffered compound comminuted fracture of left femur and fracture of bio-condylar fracture tibia, which is also compound comminuted fracture of both bones of right leg, and there was inter locking nails and also non-union and mal-united fracture of both bones of right leg and there is wasting of thigh and leg musculature and limping. P.W.6 – Doctor was a member of the District Medical Board and he had issued Ex.A-5 – certificate which shows that the claimant suffered 60% permanent disability. P.Ws.4 and 5 deposed about the treatment taken by the claimant for the fractures sustained by him. Ex.C-1 – case sheet, Ex.C-2 – X-ray films (16) in number and Ex.A-6 – X-ray film show the injuries as deposed by P.W.6 – Doctor. The date of occurrence of the accident is 01.07.2002. The claimant took treatment upto

10.11.2004. There is also evidence on record that the services of the claimant were terminated pursuant to issuance of Ex.A-8 – Unfit letter issued by SCC Ltd., Ramagundam Area, wherein it shows that the claimant is unfit to work. The claimant has also placed on record Ex.A-7 – salary certificate showing his gross monthly salary as Rs.8,526.07 ps. The Tribunal, while analyzing the entire evidence on record, was pleased to hold that the claimant suffered 60% permanent disability and awarded compensation by taking the earnings of the claimant as Rs.6,800/- per month i.e., Rs.81,600/- per annum, and multiplied with the multiplier “7” and the loss of income came to Rs.5,71,200/-. Rs.25,000/- was granted for grievous injuries, another Rs.25,000/- for pain and suffering, Rs.20,000/- for medical expenses and Rs.25,000/- for permanent disability, in total, the compensation awarded by the Tribunal is Rs.6,66,200/-.

8. The Tribunal ought to have taken the gross salary of the claimant i.e., Rs.8,526/- per month and applied right multiplier for the age of 50 years. The suitable multiplier for the age of 50 is “13”. So, the loss of earnings caused to the claimant comes to Rs.13,30,056/- (Rs.8,526/- x 12 x 13). 60% of the same comes to Rs.7,98,033/- and the same is rounded to Rs.7,98,000/-. Thus, the claimant is entitled to Rs.7,98,000/- for the loss of future earnings.

9. As contended by the learned Standing Counsel for the Insurance Company, when an amount is granted towards permanent disability and loss of earnings, the claimant is not entitled for Rs.25,000/- towards injuries. So, no amount is to be

granted for the injuries. The Tribunal rightly granted Rs.25,000/- for pain and suffering and another Rs.20,000/- towards medical expenses. In view of the grant of compensation towards loss of earnings, the claimant is not entitled for any amount towards permanent disability. Further, the claimant is granted an amount of Rs.15,000/- towards transportation, extra nourishment and attendant charges. Then, the compensation comes to Rs.8,58,000/- (Rs.7,98,000/- + Rs.25,000/- + Rs.20,000/- + Rs.15,000/-) and thus, in all, the claimant is entitled to Rs.8,58,000/- (Rupees eight lakhs fifty eight thousand only). Therefore, the compensation payable to the claimant is enhanced from Rs.6,66,200/- to Rs.8,58,000/-.

10. In the result, M.A.C.M.A.No.5076 of 2008 filed by the claimant is allowed in part modifying the order, dated 09.03.2005, passed in O.P.No.787 of 2003 by the Tribunal, enhancing the compensation from Rs.6,66,200/- to Rs.8,58,000/- with interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of deposit. On deposit of the compensation, the claimant is permitted to withdraw the entire amount along with the interest accrued thereon. The other terms of the order under challenge remain unaltered. Consequently, M.A.C.M.A.No.270 of 2006 filed by the Insurance Company is dismissed. There shall be no order as to costs.

11. Miscellaneous petitions pending, if any, in these appeals shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 05.07.2018
AMD

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