

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1982 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.1,14,514/- as against a claim of Rs.3,00,000/- by the Chairman, Motor Accident Claims Tribunal – cum – II Additional District Judge, Warangal (for short, “the Tribunal”) *vide* order, dated 19.10.2004, passed in O.P.No.1280 of 2001.

2. Heard the submissions of the learned counsel appearing for the appellant/claimant and the learned Standing Counsel for the Oriental 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 50% permanent disability and the disability certificate issued by P.W.4 clearly establishes the same; that as per the evidence on record, the claimant suffered closed head injury, communitated fracture of both bones of right leg, fracture of mandible and fracture to medial condyle of right leg, but the Tribunal erred in granting a compensation of Rs.50,000/- towards permanent disability; that the claimant suffered medical expenses to a tune of Rs.60,000/-, but the Tribunal awarded Rs.43,094/- only and ultimately, prayed to enhance the compensation and allow the appeal as prayed for.

4. On the other hand, learned Standing Counsel for the Oriental Insurance Company Limited appearing for respondent

No.2 would contend that P.W.4 is a private practitioner. He has not treated the claimant and the certificate given by him showing the disability as 50%, so also his evidence, cannot be acted upon; that the Tribunal is right and justified in granting the compensation of Rs.1,14,514/-; that there are no circumstances to enhance the compensation and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both the counsel, the short point that falls for determination is:

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

6. **POINT:-** As per Ex.A-2, the claimant suffered closed head injury, comminuted fracture of both bones of right leg, fracture of mandible and fracture to medial condyle of right leg. There is also evidence of P.W.3 with regard to the treatment given to the claimant and he spoke about the genuineness of the medical bills. There are also X-rays on record to believe that the claimant suffered injuries as indicated above. Admittedly, P.W.4 is the Assistant Professor of Orthopaedics, Warangal, who issued Ex.A-29 – disability certificate wherein it is mentioned that the claimant suffered 50% disability. There is also evidence of P.W.4 with regard to the said disability. However, the certificate issued by him (Ex.A-29) does not show that it was issued by the Medical Board. However, considering the totality of circumstances, the permanent disability suffered by the claimant can be taken as 35%. As per Ex.A-4, the claimant was drawing a monthly salary of Rs.3,210/-. The Tribunal, while dealing with the matter, had granted compensation of Rs.6,420/- towards loss of earnings for two

months, Rs.43,094/- towards medical expenses (covered by medical bills), Rs.3,000/- towards extra nourishment and incidental charges, Rs.2,000/- towards transport to hospitals under the head of Special Damages, Rs.10,000/- towards pain and suffering and Rs.50,000/- towards permanent disability under the head of General Damages and in all, a sum of Rs.1,14,514/-.

7. The grant of compensation of Rs.6,420/- towards loss of earnings, Rs.43,094/- towards medical expenses, Rs.3,000/- towards extra nourishment and incidental charges, Rs.2,000/- towards transportation and Rs.10,000/- towards pain and suffering cannot be faulted. In view of the circumstances, the claimant is entitled for grant of compensation for 35% disability suffered by him and the same is calculated herein. As per the records, the claimant was 25 years on the date of accident. His monthly income was Rs.3,210/-. The suitable multiplier for the age of 25 is "18". Thus, the claimant is entitled for a sum of Rs.2,42,676/- ($\text{Rs.3,210/-} \times 12 = 38,520\text{- per annum} \times 18 \times 35/100$). He is also entitled for a sum of Rs.6,420/- towards loss of earnings, Rs.43,094/- towards medical expenses, Rs.3,000/- towards extra nourishment and incidental charges, Rs.2,000/- towards transportation, Rs.10,000/- towards pain and suffering. In total, the claimant is entitled for a compensation of Rs.3,07,190/- ($\text{Rs.2,42,676/-} + \text{Rs.6,420/-} + \text{Rs.43,094/-} + \text{Rs.3,000/-} + \text{Rs.2,000/-} + \text{Rs.10,000/-}$) and the same is restricted to Rs.3,00,000/- as claimed.

8. Thus, the appellant/claimant is entitled for a total compensation of Rs.3,00,000/- (Rupees three lakhs only). The

Tribunal awarded interest at the rate of 9% per annum on the amount granted as compensation from the date of petition till realisation. As per the settled legal position, the appellant/claimant is entitled for interest at the rate of 7.5% per annum only on the enhanced amount of compensation.

9. Accordingly, this appeal is allowed modifying the order, dated 19.10.2004, passed in O.P.No.1280 of 2001 by the Tribunal, enhancing the compensation from Rs.1,14,514/- to Rs.3,00,000/-. The enhanced amount of compensation carries interest at the rate of 7.5% per annum from the date of petition till realisation. 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 : 18.07.2018
AMD

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