

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3471 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) is filed by the appellant/claimant, challenging the order, dated 19.06.2003, passed in O.P.No.843 of 1999 by the Motor Accident Claims Tribunal-cum-District Judge, East Godavari at Rajahmundry ('the Tribunal', for brevity), seeking enhancement of compensation granted by the Tribunal and for a direction to the 3rd respondent-Insurance Company to pay the compensation awarded, jointly and severally along with the other respondents, in favour of the appellant-claimant.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellant-claimant would contend that though the appellant-claimant suffered grievous and simple injuries in the subject accident occurred on 31.07.1999, the Tribunal granted a meagre compensation of Rs.13,453/- with interest @ 6% per annum from the date of petition till realisation, as against a claim of Rs.1,00,000/-. Further, in spite of specific admission made by the 3rd respondent-Insurance Company in the counter filed by it in the claim petition with regard to the coverage of the policy of insurance in respect of the offending auto bearing registration No.AIV-9132, the Tribunal erroneously dismissed the claim against the 3rd respondent-Insurance Company and ultimately

prayed to enhance the compensation granted by the Tribunal and to fasten the liability against the 3rd respondent-Insurance Company to pay compensation.

4. On the other hand, the learned Standing Counsel for the 3rd respondent-Insurance Company would contend that there is no admission in the counter filed by the 3rd respondent-Insurance Company with regard to the coverage of the policy of insurance in respect of the offending auto bearing registration No.AIV-9132. The Tribunal had elaborately discussed the entire evidence on record and rightly dismissed the claim against the 3rd respondent-Insurance Company. There are no circumstances to enhance the compensation granted by the Tribunal and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

1. Whether the appellant-claimant is entitled for enhancement of compensation as claimed?
2. Whether a direction can be given to the 3rd respondent-Insurance Company to pay the compensation in favour of the appellant-claimant jointly and severally along with the other respondents.

Point No.1:-

6. It is not in dispute that the appellant-claimant suffered injuries in the subject accident occurred on 31.07.1999, due to rash and negligent driving of the driver of the auto bearing registration No.AIV-9132. As per Ex.A.3-Certified copy of Wound Certificate of the appellant-claimant, the appellant-

claimant suffered five injuries in the subject accident. Injury No.1 is grievous in nature and the other four injuries are simple in nature. X-rays reveal that the appellant-claimant suffered a fracture to her left femur. Considering the same, the Tribunal granted a total compensation of Rs.13,453/- in favour of the appellant-claimant, as detailed below.

1.	For one grievous injury	Rs.5,000/ -
2.	For four simple injuries	Rs.4,000/ - (@ Rs.1,000/ - per injury)
3.	Towards Medical Expenditure	Rs.4,453/ -
TOTAL		Rs.13,453/ -

7. Admittedly, the subject accident occurred on 31.07.1999. The earning capabilities of the persons in those days are required to be taken into consideration for assessment of compensation. In view of the same, the Tribunal is justified in granting the aforementioned compensation in favour of the appellants-claimants. There is nothing to take a different view.

8. The Tribunal granted interest at the rate of 6% per annum on the amount granted as compensation. It is apt to refer to the decision of the Apex Court in Dharampal Vs. State Road Transport Corporation¹, wherein, the Apex Court awarded interest at the rate of 7.5% per annum on the amount awarded as compensation. There are number of other citations, wherein, interest was awarded at the rate of 7.5% per annum on the amount awarded as compensation. In view of the same, awarding interest at the rate of 6% per annum on the amount awarded as compensation by the Tribunal is held to be on lower

¹ MANU SC 7680 2008

side. Accordingly, interest @ 7.5% per annum is awarded no the compensation amount from the date of petition till realisation. This point is accordingly answered in favour of the appellant-claimant and as against the 3rd respondent-Insurance Company.

Point No.2:-

9. The learned counsel for the appellant-claimant contended that there is specific admission by the 3rd respondent-Insurance Company in the counter filed by it in the claim petition with regard to the coverage of the policy of insurance in respect of the offending auto bearing registration No.AIV-9132. The learned Standing Counsel for the 3rd respondent-Insurance Company denied the same. While dealing with the said aspect, the Tribunal had recorded a categorical finding that the 3rd respondent-Insurance Company had neither admitted nor denied as to the coverage of the policy of insurance in respect of the offending auto bearing registration No.AIV-9132. The initial onus of proof was on the appellant-claimant to prove that the offending vehicle bearing registration No.AIV-9132 was validly insured with the 3rd respondent-Insurance Company as on the date of the subject accident, which was not discharged by her. Copy of Insurance policy was also not marked. No other evidence was adduced to prove that that the offending vehicle bearing registration No.AIV-9132 was validly insured with the 3rd respondent-Insurance Company as on the date of the subject accident. Under these circumstances, the Tribunal rightly dismissed the claim against the 3rd respondent-Insurance

Company. There is nothing to take a different view. This point is accordingly answered in favour of the 3rd respondent-Insurance Company and against the appellant-claimant.

10. In the result, the appeal is allowed in part, modifying the Order, dated 19.06.2003, passed in O.P.No.843 of 1999 by the Tribunal, only to the extent of enhancing the rate of interest from 6% per annum to 7.5% per annum on the amount granted as compensation (Rs.13,453/-) from the date of application till realisation. The other terms of the Order under challenge remain unaltered. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

18th September, 2018
Bvv

Dr. SHAMEEM AKTHER, J

