

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2214 of 2005

JUDGMENT:

Aggrieved by the grant of compensation of Rs.52,200/- as against a claim of Rs.3,64,503/- by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Guntur ('the Tribunal' for brevity), vide order, dated 26.11.2004, passed in M.V.O.P.No.184 of 2000, the claimant preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) seeking enhancement of compensation.

2. Heard the learned counsel for appellant-claimant and perused the record. Though notice is served on the 2nd respondent-Insurance Company, there is no representation on its behalf. This appeal is of the year 2005. Hence, it can be disposed of on merits, basing on the material on record, without waiting for the learned Standing Counsel for the 2nd respondent-Insurance Company to advance arguments.

3. The learned counsel for the appellant-claimant would contend that the Tribunal, though assessed the compensation payable to the appellant-claimant at Rs.87,000/-, erroneously held that there was contributory negligence on the part of the appellant/claimant and deducted 40% of the assessed compensation and granted only Rs.52,200/- in favour of the appellant-claimant with interest at the rate of 9% per annum from the date of petition till the date of realisation. The Tribunal did not grant medical expenses and granted inadequate compensation on all other heads and ultimately prayed to enhance the compensation.

4. In view of the submissions of the learned counsel for the appellant-claimant, the points that arise for consideration in this appeal are as follows:-

1. Whether the Tribunal is justified in holding that there was contributory negligence on the part of the appellant-claimant and deducting 40% from the assessed compensation?
2. Whether the appellant-claimant is entitled for enhancement of compensation, as claimed.

5. The appellant-claimant, in order to prove rashness or negligence on the part of the driver of the lorry bearing registration No.AP-09-V-2014, deposed as P.W.1, got examined one Dr.K.Ramalingeswara Rao as P.W.2 and got marked Ex.A.1-Certified Copy of First Information Report in Crime No.146/99 of Ponnur Rural Police Station, Ex.A.2-Certified Copy of Charge Sheet in C.C.No.253 of 2000 of M.M.Court, Ponnur, Ex.A.3-Certified Copy of Wound Certificate and other medical history as Exs.A.4 to A.9 to show the injuries sustained by him in the subject accident.

6. There is specific evidence of P.W.1 that the subject accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No.AP-09-V-2014. Ex.A.1 and A.2 would substantiate the same. There is no evidence on behalf of the 2nd respondent-Insurance Company to substantiate that there was contributory negligence on the part of the appellant-claimant. Without there being oral or documentary evidence, the Tribunal held that there was contributory negligence on the part of the appellant-claimant in the occurrence of the accident and deducted 40% from the amount payable to the appellant-claimant as compensation. The said finding is unsustainable. Considering the facts and circumstances of the case, it is held that the appellant-claimant

sustained injuries in the subject accident due to rash and negligent driving of the driver of the lorry bearing registration No.AP-09-V-2014.

7. With regard to enhancement of compensation, the Tribunal had elaborately discussed the medical bills marked as Exs.A.8 and A.9 and assessed an amount of Rs.45,951/- towards medical bills and added an amount of Rs.6,000/- and odd to the said amount towards extra nourishment, attendant charges, travelling expenditure etc. The Tribunal further assessed an amount of Rs.10,000/- towards loss of earnings and Rs.25,000/- towards non pecuniary damages for pain, suffering etc. In all, the Tribunal assessed the compensation payable to the appellant-claimant at Rs.87,000/-. The Tribunal assigned reasons in doing so. There is no infirmity in the same.

8. Admittedly, the subject accident occurred on 06.11.1999. The earning capabilities etc., at the relevant point of time are required to be taken into consideration to assess the special and pecuniary damages. The Tribunal cannot be faulted in assessing the aforementioned compensation. Since there is no contributory negligence on the part of the appellant-claimant, the Tribunal ought not to have deducted 40% from the assessed compensation. Therefore, the claimant is entitled for an amount of Rs.87,000/- and interest thereon towards compensation.

9. Accordingly, this appeal is allowed in part modifying the order, dated 26.11.2004, passed in M.V.O.P.No.184 of 2000 by the Tribunal, enhancing the compensation payable to the appellant-claimant from Rs.52,200/- to Rs.87,000/-. The enhanced amount of compensation carries interest at the rate of 7.5% per annum from the date of

application till realisation. The other terms of the Order under challenge remain unaltered. On deposit of the compensation, the appellant-claimant is permitted to withdraw the entire amount with interest.

Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

04th July, 2018
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