

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2411 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.3,000/- with proportionate costs and interest at 9% per annum from the date of petition till the date of realisation, as against a claim of Rs.1,50,000/-, by the learned Chairman, Motor Accident Claims Tribunal – cum – V Additional District Judge (Fast Track Court) at Nizamabad (for short, “the Tribunal”) *vide* order, dated 04.01.2005, passed in O.P.No.1818 of 2002.

2. Heard the submissions of the learned counsel appearing for the appellant/claimant. In spite of service of notice long back, there is no representation for respondent No.1/the Oriental Insurance Company Limited. The matter pertains to the year 2005. So, it can be disposed of basing on the material available on record.

3. Learned counsel for the appellant/claimant would contend that the claimant suffered three grievous injuries and two simple injuries and there is ample record to substantiate the same including the evidence of P.W.2 – Dr. T.Narsing Rao; that the Tribunal held that the claimant suffered only one simple injury and awarded Rs.3,000/- only, which is meagre; that the Tribunal had not granted just and reasonable compensation for the injuries and the consequences arose therefrom and ultimately, prayed to enhance the compensation and allow the appeal as prayed for.

4. In view of the submissions made by the learned counsel for the claimant, the short point that falls for determination is:

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

5. **POINT:-** There is the specific evidence of P.W.2 – Doctor that the claimant suffered the following injuries:

***“(i) fracture of ribs – 5th, 6th and 7th of right side of chest.
(ii) subluxation of right acromio clavicular joint
iii) Abrasion on outer canthus of right eye, black eye
iv) Falling pre molar tooth lower jaw of right side
v) Contusion right fore arm.”***

P.W.2 was of the opinion that injury Nos.1, 2 and 4 are grievous in nature whereas injury Nos.3 and 5 are simple in nature. He treated the claimant by admitting him in the hospital on 15.08.2001. The date of occurrence of the accident is 15.08.2001. Exs.A-1 to A-16 were marked on behalf of the claimant. Ex.A-1 is the certified copy of F.I.R. Ex.A-2 is the certified copy of charge sheet. Ex.A-3 is the certified copy of Medical Certificate. Ex.A-4 is the case sheet of Tirumala Orthopaedic Hospital. Ex.A-5 is the receipt. Ex.A-6 is the prescription of Dr.T.Narsing Rao. Exs.A-7 to A-11 are the medical bills. Ex.A-12 is the salary certificate. Ex.A-13 is the certificate of Training of APITCO. Ex.A-14 is the xerox copy of policy. Ex.A-15 is the Disability Certificate. Ex.A-16 is the X-ray film. P.W.2 deposed that the claimant suffered 45% disability. The Tribunal, while determining the compensation, stated that there is a Government Medical Board consisting of Doctors to assess the disability and P.W.2 exaggerated the disability giving it as 45%. The Tribunal did not consider the said disability and held that the claimant suffered only one simple

injury and awarded Rs.3,000/- towards compensation. When there is a specific mention of injuries by P.W.1/claimant and P.W.2/Doctor, and in support of the same, X-ray and other medical records are filed, the Tribunal could have believed the evidence of P.W.2 in the given circumstances. So, in view of the evidence on record, it can be safely concluded that the claimant suffered three grievous injuries and two simple injuries, as deposed by P.W.2, and he got treatment for those injuries from P.W.2. The subject accident is of the year 2001. So, the earning capability of that year is required to be taken into consideration to determine the compensation payable. So, the claimant is entitled for a sum of Rs.15,000/- for the injuries and pain and suffering, Rs.3,000/- for transportation, medical expenses etc., and Rs.4,500/- for loss of earnings for a period of three months i.e., at the rate of Rs.1,500/- per month. Thus, the appellant/claimant is entitled for a total compensation of Rs.22,500/- (Rupees twenty two thousand five hundred only) (Rs.15,000/- + Rs.3,000/- + Rs.4,500/-).

6. Accordingly, this appeal is allowed in part modifying the order, dated 04.01.2005, passed in O.P.No.1818 of 2002 by the Tribunal, enhancing the compensation from Rs.3,000/- to Rs.22,500/-. 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.

7. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 17.08.2018
AMD



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