

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3354 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-claimant aggrieved by the order dated 09.12.2004 in O.P.No.1809 of 2001 on the file of the Motor Accident Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Nizamabad (for short 'the Tribunal').

2. Heard the learned counsel for appellant-claimant and perused the record.

3. Though there is service of notice on respondents, there is no representation on their behalf. This appeal pertains to the year 2005. Hence, it can be decided basing on the material available on record.

4. Learned counsel for the appellant would contend that the appellant suffered fracture as mentioned in Ex.A3-medical certificate. There is ample evidence to substantiate the same. The Tribunal did not consider the same and granted compensation of Rs.19,500/-, which is meagre and ultimately prayed to enhance the compensation as prayed for.

5. While answering issue No.1, the Tribunal held that the appellant suffered injuries in a road accident that occurred on 19.08.2001 due to the rash and negligent driving of the driver of jeep bearing No.AP 13 T 5401. The respondents, who are owner, and insurer, of the said jeep, have not disputed that finding and the other findings in the case.

6. Now the point is only with regard to enhancement of compensation on the grounds urged before this Court.

7. P.W.1-injured filed his chief-affidavit before the Tribunal stating that the accident occurred on 19.08.2001 due to the rash and negligent driving of the driver of jeep bearing No.AP 13T 5401 and he sustained fractures on both the legs. In support of his case, he filed Ex.A3-medical certificate, wherein it is mentioned that the appellant suffered fracture of left leg. The appellant examined P.W.2-Dr.G.Jaya Prakash. The said doctor deposed that the appellant suffered fracture of both bones of right leg. Ex.A8-discharge summary also reveals that the appellant suffered fracture of both bones of right leg. The evidence of P.W.2 and Ex.A8-discharge summary are totally in contradiction with the evidence of P.W.1-appellant with regard to the injuries suffered. Further, Ex.A3 is also in contradiction with the evidence of P.W.2-doctor. As regards the opinion of the doctor-P.W.2, this Court time and again opined that the said doctor was in habit of facilitating the injured/patients and therefore, his medical opinion in some cases not accepted. There is also finding to that effect in the impugned order. Under these circumstances, it is difficult to believe that the appellant sustained fracture either to the right leg or to the left leg. The Tribunal was justified in taking a similar view. However, the Tribunal considering the totality of the circumstances was pleased to grant compensation for the injuries and consequences arose therefrom at Rs.19,500/- to the appellant. Under these circumstances, there is nothing to take a different view and the appeal is devoid of merit and it is liable to be dismissed.

8. In the result, the appeal is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Dr. SHAMEEM AKTHER, J

Date: 28.08.2018
ssp

