

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.602 of 2005

JUDGMENT:

Aggrieved by the grant of compensation of Rs.1,58,629/- as against a claim of Rs.4,40,000/- by the I Additional District Judge, Guntur, vide order, dated 16.10.2004, passed in M.V.O.P.No.70 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, the learned Standing Counsel for the National Insurance Company Limited representing the 2nd respondent and perused the record.

3. The learned counsel for the appellant-claimant would contend that the appellant-claimant sustained six fractures and other simple injuries in the subject accident. The Court below granted an amount of Rs.90,000/- for the same, which is meagre. The Court below granted Rs.15,000/- for the disability sustained by the appellant-claimant and Rs.23,629/- towards medical bills, which are also meagre and ultimately prayed to enhance the compensation as claimed.

4. On the other hand, the learned Standing Counsel for the 2nd respondent-Insurance Company would contend that the Court below had taken all the relevant factors into consideration and granted just and reasonable amount as compensation. There are no circumstances to interfere with same and ultimately

prayed to dismiss the appeal by confirming the Order under challenge.

5. It is not in dispute that the appellant-claimant sustained injuries in a road accident occurred on 26.08.1999, due to the rash and negligent driving of the driver of the bus bearing registration No.AP-07-T-2221. So, the only point that arises for consideration in this appeal is whether the appellant-claimant is entitled for enhancement of compensation.

6. To prove the claim, the appellant-claimant deposed as P.W.1, got examined P.W.2-Dr.N.Chandran and P.W.3-Dr.S.Amarnath and got marked Ex.A.1-Certified Copy of First Information Report, Ex.A.2-Certified Copy of Charge-sheet, Ex.A.3-Certified Copy of M.V.I. Report, Ex.A.4-Discharge Certificate issued by Hi-tech Trauma Hospital, Guntur, Ex.A.5-146 prescriptions and medical bills for Rs.23,629/-, Ex.A.6-Receipt for Rs.47,000/- and Ex.X.1-Case-sheet maintained by P.W.2. On behalf of the respondents, no oral evidence has been adduced and Ex.B.1-Copy of policy, Ex.B.2-Office copy of notice issued by 2nd respondent to the 1st respondent and Ex.B.3-Postal acknowledgement were marked.

7. The oral and documentary evidence on record reveals that the appellant-claimant sustained the following injuries:

1. Fracture of the Tenth Rib on right side.
2. Fracture on both pubic rami.
3. Fracture shaft of right femur.
4. Fracture shaft of left femur.
5. Fracture of second and third metatarsal of right foot.

8. There is evidence of P.W.2-Dr.N.Chandran to the effect that the appellant-claimant suffered 40% disability. The Court below took the disability suffered by the appellant-claimant at 15% and granted a compensation of Rs.15,000/-, discarding the evidence of P.W.2. Admittedly, the appellant-claimant was not examined by a competent Medical Board to assess the disability sustained by him. The doctors who treated him deposed before the Court below as P.W.2 and P.W.3. As per the medical and documentary evidence, the appellant-claimant sustained fracture to the shaft of the right femur and fracture to the shaft of left femur. Further, there was also fracture of second and third metatarsal of right foot. Tenth rib on the right side of the appellant was also fractured. In all, the appellant-claimant sustained six fractures, as contended by the learned counsel for the appellant-claimant. Under these circumstances, the Court below ought to have held that the appellant-claimant suffered 35% permanent partial disability. This Court deems it appropriate to take the disability suffered by the appellant-claimant at 35%. If the annual notional income of the appellant-claimant is taken at Rs.15,000/- and multiplier '15' is adopted, it would come to Rs.2,25,000/- and 35% of it comes to Rs.78,750/- which is rounded off to Rs.80,000/-. Thus, the appellant-claimant is entitled for Rs.80,000/- for the disability suffered by him. The Tribunal did not grant any amount towards extra nourishment, attendant charges and transportation charges. Thus, this Court deems it appropriate to grant Rs.5,000/- on the said scores. The Tribunal granted Rs.90,000/-

for the injuries, Rs.30,000/- towards hospitalisation charges and Rs.23,629/- towards medical expenses. The same is just and reasonable and no interference is required. Thus, the appellant-claimant is entitled for a total compensation of Rs.2,28,629/- (Rs.90,000/- + Rs.80,000/- + Rs.30,000/- + Rs.23,629/- + Rs.5,000/-).

9. Accordingly, this appeal is allowed in part, modifying the order, dated 16.10.2004, passed in M.V.O.P.No.70 of 2000 by the Court below, enhancing the compensation payable to the appellant-claimant from Rs.1,58,629/- to Rs.2,28,629/-. 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 accrued thereon.

There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

05th July, 2018
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