

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.NOs.803 OF 2006 AND 3866 OF 2008

COMMON JUDGMENT:

These two appeals, one by the claimant and another by the Insurance Company, are filed under Section 173 of the M.V. Act, aggrieved by the order, dated 24.12.2005, in O.P.No.790 of 2003, passed by the Motor Accident Claims Tribunal-cum-District Judge, Karimnagar, whereby compensation of Rs.2,20,376/- was granted in favour of the claimant with interest at 7.5% p.a. from the date of petition till the date of realization.

2. Heard learned counsel for the claimant, the learned standing counsel for the Insurance Company and perused the record.

3. Learned counsel for the appellant-claimant in MACMA No.803 of 2006 would submit that as per the medical record, the claimant suffered 60% disability. The claimant was running a cable net work and was earning Rs.6,000/- per month. The Tribunal had taken monthly income as Rs.3,000/- and assessed disability suffered by the claimant at 20%, which is contra to the evidence on record. The Tribunal ought to have taken 60% disability and assessed the compensation payable to the claimant.

4. On the other hand, learned standing counsel for the appellant- Insurance Company in MACMA No.3866 of 2008 would submit that the compensation of Rs.2,20,376/- granted by the Tribunal is excessive. There is no medical evidence to assess the disability at 20%. The doctor, who treated the claimant was not examined. Therefore, the disability assessed by the Tribunal at 20% is unacceptable.

5. In view of submissions made by both sides, the point for determination is whether the compensation of Rs.2,20,376/- granted by the Tribunal is liable to be reduced or enhanced?

6. There is no dispute that the claimant suffered injuries due to rash and negligent driving of the lorry bearing No.AP-28-T-3864 by its driver. P.W.1, who is the injured in this case, in clear and categorical terms deposed with regard to injuries suffered by him. The injuries are as follows:

- 1.Comminuted fracture of left femur;
- 2.Fracture of shaft left fibula; and
- 3.Fracture of neck of third meta carpals and shaft of second meta-carpal.

Ex.A3 is the wound certificate of the claimant, which reveals the injuries mentioned above. Further, there is also evidence of P.W.4, who is a Member of District Medical Board that he examined the claimant on 21.10.2003 and issued disability certificate showing disability as 60%. Ex.A13-disability certificate corroborates his evidence. P.Ws.2, 3 and 5 deposed about the nature of occupation of the claimant i.e., the claimant was running a cable net work at the relevant point of time. They also deposed about the licence and other details of the claimant for doing such business and his monthly income. The Tribunal after analyzing the evidence of these witnesses, came to a conclusion that the monthly income of the claimant was Rs.3,000/-. The Tribunal had assigned reasons for determining the monthly income of the claimant as Rs.3,000/- as the claimant was running a cable net work in a small village. Therefore, there is nothing wrong in

determining the monthly income of the claimant as Rs.3,000/-.

7. Admittedly, the claimant did not examine the doctor, who treated him. But, he examined P.W.4, who was a Member of District Medical Board and issued Ex.A13, wherein the disability suffered by the claimant was shown as 60%. Ex.A13 was issued basing on the discharge summary of NIMS Hospital, Hyderabad. The said discharge summary was not produced before the Tribunal. The Tribunal while relying on the decision reported in **M.JAYANNA V K.RADHA KRISHNA REDDY AND ANOTHER** (2005 ACJ 344), held that when P.W.4 did not treat the claimant and gave certificate, it was unsafe to accept the evidence of P.W.4 and determine the disability suffered by the claimant as 60%. When the doctor, who treated the claimant was not examined, there is nothing wrong on the part of the Tribunal to take such a view. The percentage of disability assessed by the Tribunal i.e., 20% cannot be held to be erroneous. Taking the said percentage of disability and monthly income of the claimant as Rs.3,000/-, the Tribunal calculated that the compensation of Rs.1,15,200/- is payable to the claimant for partial permanent disability. Besides the above amount, the Tribunal also granted Rs.1,000/- towards transportation charges, Rs.5,000/- towards extra-nourishment, Rs.79,176/- towards expenses incurred for treatment and Rs.20,000/- towards pain and suffering. In all, the Tribunal granted compensation of Rs.2,20,376/-. It can safely be concluded that grant of compensation of Rs.2,20,376/- is just and reasonable. The finding of the Tribunal is based on evidence on record. There is nothing to take a contra view. The submissions

made by both sides do not merit consideration to vary the award passed by the Tribunal.

8. Accordingly, these two appeals are dismissed confirming the order, dated 24.12.2005, in O.P.No.790 of 2003, passed by the Motor Accident Claims Tribunal-cum-District Judge, Karimnagar. The claimant is permitted to withdraw the entire amount lying to the credit of above O.P. No order as to costs. Interim stay granted by this Court shall stand vacated. Miscellaneous petitions, if any pending in these appeals shall stand closed.

DATED: 05-06-2018
Hsd

DR.SHAMEEM AKTHER, J

