

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.636 of 2007

JUDGMENT:

Aggrieved by the grant of compensation of Rs.3,43,133/- as against a claim of Rs.10,00,000/- by the Motor Accident Claims Tribunal-cum-II Additional District Judge, Vijayawada ('the Tribunal' for brevity), vide order, dated 02.01.2007, passed in M.V.O.P.No.424 of 2005, the claimant preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) seeking enhancement of compensation.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellant-claimant would contend that the appellant-claimant suffered grievous and simple injuries in the subject accident occurred on 03.07.2003 due to rash and negligent driving of the driver of the tractor bearing registration No.AP-20-U-380. Consequently, he suffered 50% disability due to the accidental injuries. Ex.A.28-Disability Certificate issued by the Medical Board, Vijayawada, would substantiate the same. P.W.3- Dr.T.Anjaneyulu, Civil Surgeon & RMO, Government General Hospital, Vijayawada, who is one of the doctors who treated the appellant-claimant, had categorically deposed that the appellant-claimant sustained 50% disability due to the accidental injuries. However, the Tribunal granted a meagre compensation of Rs.50,000/- towards disability. The Tribunal granted lesser amount towards pain and suffering and under other heads 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 as per the evidence on record, the petitioner was a chronic diabetic patient. The Tribunal justified in granting Rs.50,000/- towards disability and Rs.10,000/- towards pain and suffering. The Tribunal awarded just and reasonable compensation under different heads. There are no circumstances to enhance the compensation and ultimately prayed to dismiss the appeal by confirming the Order under challenge.

5. It is not in dispute that the appellant-claimant suffered injuries in the subject accident occurred on 03.07.2003, due to rash and negligent driving of the driver of the tractor bearing registration No.AP-20-U-380. The point that arises for determination in this appeal is whether the appellant-claimant is entitled for enhancement of compensation as claimed.

6. Ex.A.28 is the xerox copy of the Disability Certificate issued by the Medical Board, Vijayawada, wherein, it is mentioned that the appellant-claimant suffered fracture of right femur and fracture of left femur in the subject accident and he sustained 50% disability. There is also specific evidence of P.W.3-doctor to that effect. There is also record to show that the appellant-claimant was a chronic diabetic patient. The appellant-claimant was 46 years old as on the date of the subject accident. He was a tailor by profession. He suffered grievous and simple injuries in the subject accident. Under these circumstances, the Tribunal ought to have granted some more amounts towards pain and suffering, loss of earnings and also on other heads. Considering the totality of the circumstances, this Court deems it appropriate to grant further

Rs.1,00,000/- towards extra nourishment, transportation, medical expsnes and expenses for rendering services to him (in addition to the compensation of 3,43,133/- granted by the Tribunal). Thus, the appellant-claimant is entitled for a total compensation of Rs.4,33,133/- (Rs.3,43,133/- + Rs.1,00,000/-). The Tribunal granted interest @ 7.5% per annum on the amount granted as compensation from the date of petition till realisation, which is just and reasonable.

7. It is contended by the learned Standing Counsel for the 2nd respondent-Insurance Company that during the pendency of this appeal before this Court, the appellant-claimant died and therefore, his Legal Representatives, who were brought on record as appellants 2 to 5, are not entitled to claim compensation under the heads injuries, pain and suffering etc. Had the appellant-claimant died during the pendency of the claim petition before the Tribunal, the legal representatives of the deceased claimant are not entitled to claim compensation under the heads injuries, pain and suffering etc. When the appellant-claimant suffered grievous and simple injuries in the subject accident and was bed ridden for a considerable period, his legal representatives (appellants 2 to 5 herein) would have incurred expenditure for his treatment and would have done service to him. On this score, they are entitled for enhancement of compensation.

8. Accordingly, this appeal is allowed in part, modifying the order, dated 02.01.2007, passed in M.V.O.P.No.424 of 2005, by the Tribunal, enhancing the compensation from Rs.3,43,133/- to Rs.4,43,133/- with interest at the rate of 7.5% per annum on the

enhanced amount of compensation from the date of petition till realisation. On deposit of the enhanced amount of compensation, the appellants 2 to 5 are permitted to withdraw the same along with interest accrued thereon in equal shares. Other terms of the Order under challenge remain unaltered. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

26th September, 2018
Bvv

