

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.572 of 2005

JUDGMENT:

Aggrieved by the award of compensation of Rs.29,000/- as against a claim of Rs.2,00,000/- by the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Nizamabad ('the Tribunal' for brevity), vide order, dated 29.11.2004, passed in O.P.No.838 of 1999, 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 the appellant-claimant, the learned Standing Counsel for New India Assurance Company Limited representing the 2nd respondent and perused the record.

3. The learned counsel for the appellant-claimant would submit that the Tribunal awarded meagre amount as compensation in spite of the appellant-claimant suffering simple and grievous injuries. The Tribunal has not granted any compensation for 45% disability suffered by the appellant-claimant and ultimately prayed to allow the appeal as prayed for.

4. On the other hand, the learned Standing Counsel for New India Assurance Company Limited representing the 2nd respondent would submit that the Tribunal had taken all the factors into consideration and awarded just and reasonable amount towards compensation. Further, the Tribunal assigned

reasons for not granting compensation for the disability suffered by the appellant-claimant. There are no circumstances to vary the award and ultimately prayed to dismiss the appeal.

5. There is no dispute with regard to the appellant-claimant suffering injuries in a motor accident that occurred on 08.01.1999 due to the rash and negligent driving of the driver of the Maruthi Car bearing registration No.AP-10-H-5002 belonging to the 1st respondent. As per the evidence of P.Ws.1 and 2, the appellant/claimant suffered the following injuries.

1. Abrasion 3 x 2 cm on right leg.
2. Fracture of lateral condyl of right tibia.

The appellant-claimant, by leading cogent and convincing evidence, established that he suffered the aforementioned injuries. The Tribunal had granted compensation to the appellant-claimant as mentioned hereunder:

1.	Simple injury, i.e, abrasion	Rs.1,000/-
2.	Fracture of lateral condyl of right tibia	Rs.5,000/-
3.	Probable expenditure for the treatment of the injuries	Rs.5,000/-
4.	Loss of earnings	Rs.18,000/-
TOTAL		Rs.29,000/-

6. It is contended on behalf of the appellant-claimant that the appellant-claimant suffered 45% disability and that the Tribunal has not granted any compensation for the same. The Tribunal, while dealing with this aspect, held that P.W.2—Dr.T.Narsing Rao is in the habit of issuing disability certificates at Nizamabad for whoever approaches him and that if really the appellant-claimant had sustained disability, he ought to have appeared before the Medical Board at Government Headquarters Hospital, Nizamabad

and obtained disability certificate. Admittedly, no disability certificate is filed, except the oral testimony of P.W.2—Dr.T.Narsing Rao that the appellant-claimant suffered 45% disability. Except the self-serving statement of P.W.1 and the statement of P.W.2-Dr.T.Narsing Rao, there is no other evidence with regard to the disability suffered by the appellant-claimant assessed by a competent medical board. Moreover, the fracture suffered by the appellant-claimant was to right Tibia. In most of the cases, it would not cause permanent or partial disability. Therefore, the Tribunal was right in not granting any compensation to the appellant-claimant for the disability said to have been sustained by him.

7. However, the Tribunal did not grant compensation towards pain and suffering. As seen from the evidence on record, the appellant-claimant suffered fracture to his right Tibia and other injuries. So, this Court deems it appropriate to award an amount of Rs.9,000/- towards pain and suffering and an amount of Rs.1,000/- towards extra nourishment and transportation charges to the appellant-claimant, in addition to the compensation granted by the Tribunal. Thus, the appellant-claimant is entitled for a total compensation of Rs.39,000/- (Rupees thirty nine thousand only) (Rs.29,000/- granted by the Tribunal + Rs.9,000/- + Rs.1,000/-). The Tribunal awarded interest at the rate of 9% per annum from the date of petition till realisation, which is just and reasonable in the facts and circumstances of the case.

8. Accordingly, this appeal is allowed in part modifying the order, dated 29.11.2004, passed by the Tribunal, enhancing the compensation from Rs.29,000/- to Rs.39,000/- with interest at the rate of 9% per annum from the date of petition till realisation on the enhanced compensation amount. On deposit of the compensation, the appellant-claimant is permitted to withdraw the entire amount and interest. The other terms of the Order under challenge remain unaltered.

Miscellaneous Petitions pending, if any, shall stand closed.

No order as to costs.

06th June, 2018
Bvv

Dr. SHAMEEM AKTHER, J

