

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3217 of 2005

JUDGMENT:

Aggrieved by the grant of compensation of Rs.40,000/- as against a claim of Rs.2,50,000/- by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Guntur ('the Tribunal' for brevity), vide order, dated 15.06.2005, passed in M.V.O.P.No.1087 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 the appellant-claimant, the learned Standing Counsels for the respondents 2 and 4/Insurance Companies and perused the record.

3. The learned counsel for the appellant-claimant would contend that the appellant-claimant suffered five grievous injuries in the subject accident. To substantiate the same, the appellant-claimant got examined P.W.2-doctor, who clearly and categorically deposed that the appellant-claimant suffered injuries in the subject accident and the treatment given to the appellant-claimant. The Tribunal had not granted any compensation towards loss of earnings, transportation charges and extra-nourishment. Further, the compensation granted by the Tribunal towards pain, suffering and medical expenses are also on lower side and ultimately prayed to enhance the compensation as claimed.

4. On the other hand, the learned Standing Counsels for respondents 2 and 4/Insurance Companies would contend that the

Tribunal is justified in granting a compensation of Rs.40,000/- to the appellant-claimant. There is no medical record to substantiate the oral evidence of P.W.2-doctor. The Tribunal gave a finding to that effect and ultimately prayed to dismiss the appeal by confirming the Order under Challenge.

5. In view of the above rival contentions, the point that arises for consideration in this appeal is whether the appellant-claimant is entitled for enhancement of compensation as claimed.

6. As per the record placed before this Court, on 19.02.1995, at about 06:45 AM, the appellant-claimant, along with others, was proceeding from Kollipara to Telaprole village in a car bearing registration No.APV-8618. When they reached Vinayaka theatre opposite to Chaitanya Mahila College, Vijayawada, a lorry bearing registration No.AP-13-T-419, being driven by its driver in a rash and negligent manner, dashed against the car in which the deceased was travelling, as a result of which, the appellant-claimant suffered grievous injuries. The Tribunal, after analysing the entire evidence on record, held that both the driver of the car bearing registration No.APV-8618 and the driver of the lorry bearing registration No.AP-13-T-419 are guilty of negligence in the ratio of 60:40 and awarded an amount of Rs.40,000/- as compensation to the appellant-claimant. The findings of the Tribunal are based on record. There is nothing to take a different view.

7. To prove the injuries suffered by the appellant-claimant in the subject accident, the appellant-claimant got examined P.W.2-Dr.K.Ratna Babu. He deposed that the appellant-claimant came to his hospital with femur splint right side and was admitted in

St. Joseph Hospital, Guntur, with one femur fracture right side, fracture of acetabulum right side (socket) with dislocation of hip, fracture of left radius with joint involvement and associated foot drop on right side because of the hip injury and nasal bone fracture. There is shortening of right lower limb. The appellant-claimant underwent operation on 27.02.1995 conducted by a Neurosurgeon and a bur hole was put on his forehead and closed reduction of left wrist was done. On 28.02.1995, external fixation was done on right femur. On 17.03.1995, final operation on right femur was done with planting and screws. On 27.06.1995, corrective osteotomy (to correct the deformity) was done with metal wires. Again, on 03.09.1996, because of right foot drop, triple arthodesis was done. There is shortening of 1 ½ to 2 inch of right lower limb, because of the socket fracture with associated dislocation of right hip joint. P.W.2 also deposed that the injuries suffered by the appellant-claimant are grievous in nature and that he needs support of a stick to walk because of shortening of right lower limb, which is being slightly compensated by the right fore foot deformity and also disorganisation of right hip joint. There is disfigurement on face due to fracture of nasal bone. The appellant-claimant cannot sit, squat or move the hip joint. The hip joint movements are grossly restricted. The appellant-claimant cannot drive any vehicle. P.W.2 assessed the disability suffered by the appellant-claimant as 25%.

8. As per Ex.A.3-Certified Copy of Wound Certificate, the appellant-claimant suffered multiple grievous injuries in the subject accident. The evidence of P.W.2 cannot be discarded and it can be relied upon. Considering the gravity of the injuries suffered by the appellant-claimant and the consequences arose therefrom, this Court

deems it appropriate to award an amount of Rs.20,000/- towards medical expenses (as determined by the Tribunal) and Rs.30,000/- towards pain, suffering, agony and loss of amenities, instead of Rs.20,000/- granted by the Tribunal. The Tribunal had not granted any amount towards loss of earnings, transportation and extra-nourishment. Considering the nature of injuries suffered by the appellant-claimant in the subject accident, it can be safely concluded he would not have worked for one year. So, this Court deems it appropriate to award an amount of Rs.24,000/- towards loss of earnings @ Rs.2,000/- per month for twelve months. Further, an amount of Rs.11,000/- is granted towards extra-nourishment and transportation charges. There is evidence of P.W.2-doctor that the appellant-claimant suffered 25% disability in the subject accident. On that score, the appellant-claimant is granted an amount of Rs.15,000/-. In all, the appellant-claimant is entitled for a compensation of Rs.1,00,000/-, as detailed below:

|       |                                                          |                |
|-------|----------------------------------------------------------|----------------|
| 1.    | Towards medical expenses (as determined by the Tribunal) | Rs.20,000/ -   |
| 2.    | Towards pain, suffering and agony                        | Rs.30,000/ -   |
| 3.    | Towards loss of earnings                                 | Rs.24,000/ -   |
| 4.    | Towards Extra-nourishment and Transportation charges     | Rs.11,000/ -   |
| 5.    | Towards disability                                       | Rs.15,000/ -   |
| TOTAL |                                                          | Rs.1,00,000/ - |

9. Accordingly, this appeal is allowed in part, modifying the order, dated 15.06.2005, passed in M.V.O.P.No.1087 of 2000 by the Tribunal, enhancing the compensation from Rs.40,000/- to Rs.1,00,000/-. The enhanced amount of compensation carries interest at the rate of 7.5% per annum from the date of petition till realisation. On deposit of the enhanced compensation, the appellant-claimant is permitted to withdraw the entire amount along with the

interest accrued thereon. Other terms of the Order under challenge remain unaltered. The respondents shall pay the compensation now awarded in the ratio fixed by the Tribunal.

Miscellaneous Petitions pending, if any, shall stand closed.  
There shall be no order as to costs.

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Dr. SHAMEEM AKTHER, J

14<sup>th</sup> August, 2018  
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