

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1283 of 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the appellant-claimant aggrieved by the order dated 21.03.2005 in M.V.O.P.No.998 of 2001 on the file of the Motor Accident Claims Tribunal-cum-V Additional District Judge, Vijayawada (for short 'the Tribunal').

2. Heard the learned counsel for appellant-claimant, the learned counsel for respondent No.4-Insurance Company and perused the record. The appeal against respondent Nos.1 and 3 was dismissed for default on 17.11.2017. No representation for respondent No.2.

3. Learned counsel for the appellant-claimant would contend that the appellant was the driver of lorry bearing No.AP 13T 4430. Due to the fractures to both the legs, the appellant is unable to drive the lorry. There is permanent partial disability. The Tribunal had not granted adequate compensation for the disability as well as future loss of earnings. The Tribunal had not granted adequate compensation on other heads also and ultimately prayed to enhance the compensation.

4. Learned counsel for respondent No.4-Insurance Company would contend that the Tribunal had taken all the factors into consideration and rightly assessed and granted the compensation and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the point that arises for determination is, whether the appellant is entitled for enhancement of compensation?

6. As per the record and submissions made, there is no dispute with regard to the appellant suffering injuries in a road accident occurred on 27.05.2001 due to the rash and negligent driving of the driver of lorry bearing No.OR 07 3242.

7. As per the evidence and material placed on record, when the appellant was driving the lorry bearing No.AP13T 4430 on 27.05.2001, one lorry bearing No.OR 07 3242 came in a rash and negligent manner and dashed against the lorry bearing No.AP13T 4430, due to which, the appellant suffered simple and grievous injuries.

8. The contention of the appellant is that he was a lorry driver and earning Rs.4,000/- per month. The appellant did not choose to file the driving licence. Further, as per his pleadings, firstly he was admitted in the Government Hospital, Srikakulam, thereafter, he was shifted to the hospital of one B.Sambasivarao at Vijayawada. But, no single document was filed to show that he was admitted in the Government Hospital and suffered fractures to both of his legs as contended. The appellant chose to file medical record of the private hospital and examined P.W.2-doctor, who said to have treated him. The evidence of P.W.2-Dr.B.Sambasiva Rao shows that the appellant was admitted in his hospital on 30.05.2001 and discharged on 25.06.2001. As per Ex.A2-wound certificate, the appellant suffered the following injuries:-

1) Crush injury to the left thigh, 2) Trimalpolar fracture right ankle, 3) Fracture right fibula and 4) Rupture of the posterior circulate legment. He has taken Ex.A3-X-rays.

9. As per the evidence of P.W.2-doctor, injuries 2 and 3 are grievous and injuries 1 and 4 are simple. Injuries 1 to 3 were healed. No infection was developed on injury No.4. P.W.2 also stated that he issued Ex.A2-wound certificate. P.W.2 did not speak about the percentage of disability suffered by the appellant. P.W.2 stated that he did not verify any medical record before issuing Ex.A2-wound certificate. There is no reason to doubt the evidence of P.W.2. The Tribunal taking into consideration of the evidence of P.W.2, granted an amount of Rs.18,000/- towards medical expenses. So, in view of the medical evidence, it is difficult to believe that there is permanent partial disability as contended on behalf of the appellant. The Tribunal while taking all the facts and circumstances of the case into consideration, had granted compensation of Rs.72,000/- to the appellant. The Tribunal had also taken the factors prevailing in the year 2001 in assessing and awarding the compensation to the appellant.

10. As per the record, no amount was granted towards loss of earnings. When there are fractures to both the legs, it is quite natural for a person to abstain from work for not less than one year. Taking the same into consideration, the appellant is granted an amount of Rs.30,000/- towards loss of earnings @ Rs.2,500/- per month and also granted an amount of Rs.10,000/- towards extra nourishment, transportation and

other incidental charges, etc. In all, the appellant is entitled to compensation of Rs.1,12,000/- (Rs.72,000/- + Rs.30,000/- + Rs.10,000/-)

11. In the result, the appeal is partly allowed modifying the order, dated 21.03.2005, passed by the Tribunal in M.V.O.P.No.998 of 2001 enhancing the compensation from Rs.72,000/- to Rs.1,12,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit. On such deposit, the appellant is permitted to withdraw the entire amount along with interest accrued thereon.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

Date: 07.08.2018
ssp

Dr. SHAMEEM AKTHER, J

