

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2761 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/claimant aggrieved by the grant of compensation of Rs.1,23,984.75 ps., with proportionate costs and interest at 9% per annum from the date of petition till the date of realisation, as against a claim of Rs.2,00,000/-, by the learned III Additional District & Sessions Judge, Fast Track Court, Ranga Reddy District at L.B. Nagar, Hyderabad (MACT), *vide* order, dated 15.04.2005, passed in O.P.No.509 of 2001.

2. Heard the submissions of the learned counsel appearing for the appellant/claimant and the learned Standing Counsel appearing for the United India Insurance Company Limited for respondent No.2, and perused the material available on record.

3. Learned counsel for the appellant/claimant would contend that the Tribunal granted an amount of Rs.1,23,984.75 ps., with proportionate costs and interest at 9% per annum from the date of petition till the date of realisation, as against a claim of Rs.2,00,000/-; that as per the records, the claimant was a Cleaner working in a lorry and he suffered 25% disability and so the Tribunal ought to have taken the permanent disability as 100%, but the Court below, took the disability as 25% and the same is erroneous; that the Tribunal had not granted any compensation towards expenses incurred for extra nourishment, transportation and future medical expenses and ultimately, prayed to enhance the compensation and allow the appeal as prayed for. In support

of his contentions, he relied on a decision reported in **S.Muralikrishnan @ Murali vs. R.S. Sivakumar and another**¹.

4. On the other hand, learned Standing Counsel appearing for the United India Insurance Company Limited for respondent No.2 would contend that there is the evidence of P.W.2 – Orthopedic Professor working in Osmania General Hospital with regard to the percentage of disability suffered by the claimant i.e., 25%; that the Tribunal rightly took the income of the claimant and assessed the compensation and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel for both sides, the short point that falls for determination is:

“Whether the appellant/claimant is entitled for enhancement of compensation?”

6. **POINT:-** As per the evidence of P.W.2 – Dr. Dutta, who worked as a Professor of Orthopedic in Osmania General Hospital, Hyderabad at the relevant point of time, he provided treatment to the claimant. He has clearly stated that the claimant suffered 25% disability. There is also evidence to show that the claimant suffered fracture to his both legs and also simple injuries. The Tribunal took the disability suffered by the claimant as 25%, took the monthly income of the claimant as Rs.2,000/- and age of the claimant as 25 years. As such, the compensation payable towards disability was arrived at Rs.1,12,200/- by taking the relevant multiplier “18” for the age of 25.

¹ 2016 (4) ALD 83

7. In the decision referred above, this Court was pleased to hold that any disability suffered by the drivers or cleaners, even if it is 25%, the driver or cleaner cannot perform their duties. The disability suffered by them has to be taken as 100% and the compensation has to be awarded accordingly. Admittedly, the claimant was a Cleaner. As per the entire evidence, he suffered only 25% disability. The claimant suffered fracture injuries to his right femur and his left femur and he could not walk normally as a result of fractures and he was limping. The claimant suffered fracture to the femur of both legs and was provided treatment for those fractures. There is no legally acceptable evidence to establish that the claimant became incapable of discharging duties as a Cleaner or otherwise because of the above injuries. On the other hand, there is the specific evidence of P.W.2 – Doctor, who provided treatment to the claimant, that the disability suffered by the claimant was only 25%. So, in view of that, it is not appropriate to rely on the aforementioned decision of this court and hold that the disability suffered by the claimant is 100%. The Tribunal had rightly assessed the compensation payable at Rs.1,12,200/- for 25% disability. There are no circumstances to vary it.

8. The Tribunal granted an amount of Rs.1,784.75 ps. for medical expenses in view of the record filed before it. There is no mention that the claimant incurred further medical expenses for the injuries suffered by him. Therefore, no amount can be granted towards future medical expenses.

9. The Tribunal had not granted any amount towards transportation and extra nourishment. On that score, since the accident occurred on 12.05.2000, an amount of Rs.10,000/- is awarded towards transportation and extra nourishment. The Tribunal awarded an amount of Rs.10,000/- towards pain and suffering. No interference is required in respect of grant of compensation towards pain and suffering. In all, the claimant is entitled for a compensation of Rs.1,33,984.75 ps.

10. Thus, the appellant/claimant is entitled for a total compensation of Rs.1,33,984.75 ps., and the same is rounded to Rs.1,34,000/- (Rupees one lakh thirty four thousand only). The Tribunal awarded interest at the rate of 9% per annum on the amount granted as compensation from the date of petition till the date of realisation. As per the settled legal position, the appellant/claimant is entitled for interest at the rate of 7.5% per annum on the enhanced amount of compensation.

11. Accordingly, this appeal is allowed in part modifying the order, dated 15.04.2005, passed in O.P.No.509 of 2001 by the Tribunal, enhancing the compensation from Rs.1,23,984.75 ps., to Rs.1,34,000/-. 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 compensation, the appellant/claimant is permitted to withdraw the entire enhanced amount along with the accrued interest. There is no change in the other directions given by the Court below. There shall be no order as to costs.

12. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 03.08.2018
AMD



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