

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3095 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.90,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of deposit, as against a claim of Rs.6,00,000/-, by the learned Chairman, Motor Vehicle Accident Claims Tribunal – cum – XXI Additional Chief Judge – cum – Additional Metropolitan Sessions Judge – cum – VII Additional Metropolitan Sessions Judge, Red Hills, Nampally, Hyderabad (for short, “the Tribunal”) *vide* order, dated 19.08.2005, passed in M.V.O.P.No.207 of 2003.

2. Heard the submissions of the learned counsel appearing for the appellant/claimant, learned counsel for respondent No.1/owner of Hero Honda Splendor bearing No.AP-28AC-1918 (offending vehicle), learned Standing Counsel for the Oriental Insurance Company Limited appearing for respondent No.2, and perused the record.

3. Learned counsel for the appellant/claimant would contend that Tribunal granted only an amount of Rs.90,000/- with interest at 7.5% per annum as against a claim of Rs.6,00,000/-, which is meagre; that there is ample evidence with regard to the grievous injuries suffered by the claimant; that no amount was granted towards loss of earnings and towards 50% disability suffered by the claimant and ultimately, prayed to enhance the compensation and allow the appeal as prayed for.

4. On the other hand, learned counsel for respondent No.1/owner of the motor cycle bearing No.AP-28AC-1918 would contend that the Tribunal is justified in granting compensation on different heads and nothing was left; that there are no circumstances to enhance the compensation and ultimately, prayed to dismiss the appeal.

5. On the other hand, learned Standing Counsel for the Oriental Insurance Company Limited appearing for respondent No.2 would contend that the Tribunal had taken all the factors into consideration and rightly assessed the compensation at Rs.90,000/-, which is just and reasonable; that there are no circumstances to interfere with the same and ultimately, prayed to dismiss the appeal.

6. In view of the submissions made by the learned counsel on either side, the short point that falls for determination is:

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

7. **POINT:-** There is no dispute with regard to the claimant suffering injuries in a road accident that occurred on 22.12.2001 due to the rash and negligent driving of the driver of motor cycle bearing No.AP-28AC-1918. The only dispute is with regard to enhancement of compensation.

8. To substantiate the injuries and the consequences arose therefrom, the claimant deposed herself as P.W.1 and also examined P.W.2 – Dr.G.Subash Rao and got marked Exs.A-1 to A-14. Those are all criminal case record and medical record

including medical bills. As seen from Exs.A-3 and A-4, the claimant suffered the following injuries:

- (1) Large laceration exposing the muscles from hip to knee anteriorly of right leg;***
- (2) Abrasions over right leg & back region.***
- (3) Buggy swelling over the right side of forehead.***
- (4) Labial injury – laceration.”***

As seen from Ex.A-5, the claimant suffered the following injuries:

“Fracture of superior ramus of public right soft tissue injury muscle avulsion laceration of right pelvis and thigh.”

Thus, as seen from Exs.A-3, A-4 and A-5, the claimant suffered the following injuries:

“fracture injury of right leg, abrasions over right leg, buggy swelling over right side of fore head and labial injury and laceration.”

P.W.2 has stated about the injuries and the treatment taken by the claimant. While dealing with the subject matter, the Tribunal has granted compensation on different heads i.e., Rs.32,500/- towards pain and suffering, Rs.10,000/- towards transportation, Rs.5,000/- towards extra nourishment, Rs.42,060/- towards medical expenses and in all, granted Rs.89,560/-, which is rounded to Rs.90,000/-. The Tribunal did not grant any compensation towards loss of earnings and the disability suffered by the claimant. Though there is evidence of P.W.2 that the claimant suffered 50% disability, the claimant did not subject herself to competent Medical Board to determine the disability. However, some amount can be granted towards disability. As per the evidence on record, the claimant was a student studying Intermediate (M.P.C.) II year. The Tribunal, while dealing with this

aspect, did not grant any amount towards loss of studies, but granted compensation for the expenses incurred for extra nourishment. In these circumstances, the Tribunal could have granted some amounts towards attendant charges. Therefore, the claimant is entitled for a sum of Rs.10,000/- towards attendant charges. There is nothing to hold that the claimant suffered 50% disability. There was a fracture of right leg, abrasions over right leg and other injuries. Considering the same, it can be held that the claimant suffered 20% disability and suffered set back in studies for a short period. On these counts, the claimant is granted an amount of Rs.40,000/-. In all, the claimant is entitled for a compensation of Rs.1,40,000/- (Rupees one lakh forty thousand only) (i.e., Rs.90,000/- + Rs.10,000/- + Rs.40,000/-).

9. Accordingly, this appeal is allowed in part modifying the order, dated 19.08.2005, passed in M.V.O.P.No.207 of 2003 by the Tribunal, enhancing the compensation from Rs.90,000/- to Rs.1,40,000/-. 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 amount along with the accrued interest. There is no change in the other directions given by the Tribunal. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 07.09.2018
AMD

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