

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2808 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 09.06.2003 in M.V.O.P.No.226 of 1998 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Nizamabad (for short 'the Tribunal').

2. Heard the learned Standing Counsel for respondent-Insurance Company and perused the record.

3. Though the matter is posted for orders, there is no representation for the appellant-claimant. This appeal is of the year 2005. Hence, it can be disposed of on merits basing on the material available on record.

4. Learned counsel for the respondent-Insurance Company would contend that the appellant-claimant was a gratuitous passenger in the offending lorry bearing No.KA-30-2839. Therefore, the Tribunal rightly dismissed the claim against the insurance company relying on the decision rendered in *New India Assurance Company Limited v. Asha Rani and others*¹. There is nothing to take a different view and ultimately prayed to dismiss the appeal. Further, it is contended that there are no circumstances to enhance the compensation.

5. In view of the submissions made by the learned Standing Counsel for the respondent-insurance company, the points that arise for determination are:-

¹ 2003(2) SCC 223

1) Whether the appellant-claimant is entitled for enhancement of compensation?

2) Whether the insurer is liable to pay the compensation awarded?

6. As per the evidence placed on record, the Tribunal while dealing with the fracture and other injuries suffered by the claimant, was pleased to grant a compensation of Rs.50,810/- with interest @ 9% per annum. In awarding the said compensation, the Tribunal had analysed the oral and documentary evidence, particularly, the medical evidence and rightly granted the said amount. Hence, there are no circumstances to enhance the compensation. There is ample evidence on record that the appellant was a gratuitous passenger in the offending lorry bearing No.KA-30-2839. The Tribunal rightly dismissed the claim against the insurance company relying on the decision rendered in *Asha Rani's* case (1 supra). There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

7. In the result, the appeal is dismissed accordingly.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Date: 04.09.2018
ssp

Dr. SHAMEEM AKTHER, J