

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2832 OF 2006

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 07.09.2006 in M.V.O.P.No.17 of 2003 on the file of the Motor Accident Claims Tribunal-cum-II Additional District Judge, Kadapa at Proddatur (for short 'the Tribunal').

2. Heard the learned counsel for appellant-claimant, the learned counsel for respondent No.2-Insurance Company and perused the record.

3. Learned counsel for the appellant-claimant would contend that the appellant suffered grievous and simple injuries. The Tribunal granted meagre compensation of Rs.63,000/- . The Tribunal had not granted any amount towards loss of earnings for the injuries and pain and suffering. Though the appellant spent Rs.1,80,000/- towards medicines, the Tribunal granted only Rs.30,000/- towards medical expenses and ultimately prayed to enhance the compensation.

4. On the other hand, learned counsel for the respondent-Insurance Company would contend that the Tribunal taking into consideration of all the facts and circumstances of the case granted just and reasonable compensation. There are no grounds to enhance 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-claimant is entitled for enhancement of compensation?

6. There is no dispute with regard to the occurrence of accident on 02.02.2002 and the appellant-claimant suffering injuries in that accident due to the rash and negligent driving of the driver of the motorcycle bearing No.AP-04-D-1326. The only dispute is with regard to enhancement of compensation.

7. The Tribunal while dealing with the subject matter relied on the evidence of P.W.2-doctor and Ex.A3-wound certificate and also Ex.A8-disability certificate and held that the appellant suffered one grievous injury and four simple injuries. The Tribunal granted an amount of Rs.20,000/- for grievous injury and Rs.8,000/- for four simple injuries and another Rs.5,000/- for pain and suffering.

8. The Tribunal had discussed the medical bills and prescriptions and held that the medical bills are not supported by the prescriptions. Further, P.W.2-doctor did not state whether the medicines purchased under Ex.A.9-medical bills, etc., were used by the appellant. The evidence of P.W.2-doctor reveals that the medicines mentioned in Ex.A9 were required by the appellant for treatment. Considering the same, the Tribunal granted an amount of Rs.30,000/- towards medical expenses. In total, the Tribunal granted Rs.63,000/- towards compensation.

9. Learned counsel for the appellant contended that the appellant is entitled for loss of earnings. In support of his contention, he relied upon a decision of the Supreme Court in *V.Mekala v. M.Malathi and another*¹ wherein it is held that the claimant therein was a brilliant student, suffered 70% partial permanent disability on

¹ 2014(5) ALD 42(SC)

account of the injuries suffered in the motor accident and that she was 10 years old and there is school record and that the Principal of the institution concerned supported brilliancy of the claimant. Considering those aspects, the Hon'ble Apex court took notional income of the claimant therein at Rs.10,000/- per month, added 50% thereof towards future hike in the income and accordingly, assessed and awarded the compensation.

10. In the instant case, though the appellant/claimant filed Ex.A8-disability certificate issued by P.W.2(Doctor), P.W.2 was not the Doctor who treated the appellant. The appellant/claimant was not submitted to the competent Medical board to assess partial permanent disability. In the instant case, the appellant/claimant suffered one grievous injury and 4 simple injuries. Therefore, it cannot be held that the appellant/claimant suffered 40% of disability as indicated in Ex.A8-disability certificate. So, the circumstances of the case on hand are different from the circumstances determined in the above cited decision.

11. Taking into consideration the grievous and simple injuries and the impact of those injuries, this Court is inclined to grant Rs.20,000/- towards disability caused to the appellant and Rs.10,000/- towards expenses incurred for extra nourishment and transportation, etc. in addition to the amount already awarded by the Tribunal.

12. Accordingly, this appeal is allowed in part modifying the order, dated 07.09.2006 in O.P.No.17 of 2003, enhancing the compensation from Rs.63,000/- to Rs.93,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of petition till

realisation. On deposit of the compensation, the appellant-claimant is permitted to withdraw the entire amount with interest. The other terms of the order under challenge remain unaltered.

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

Dr. SHAMEEM AKTHER, J

Date: 30.07.2018
ssp

