

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3496 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 20.01.2005 in O.P.No.418 of 1998 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Nizamabad (for short 'the Tribunal').

2. Heard the learned counsel for the appellant-claimant and perused the record.

3. Though the matter is posted 'for orders', there is no representation for the 1st respondent-owner and 2nd respondent-insurance company. The appeal against respondent No.3 was dismissed for default on 06.01.2012. This appeal pertains to the year 2005. Hence, it can be disposed of on merits basing on the material available on record.

4. Learned counsel for the appellant-claimant would contend that though the appellant suffered grievous injuries and 60% disability, the Tribunal granted only Rs.5,000/- towards pain and suffering and Rs.50,000/- towards disability, which are meagre and ultimately, prayed to enhance the compensation.

5. In view of the submissions made by the learned counsel for the appellant-claimant, the only point that arises for determination is, whether the appellant is entitled for enhancement of compensation?

6. POINT:- As per the evidence placed on record, the appellant suffered injuries in a motor accident that occurred on

20.05.1998 due to the rash and negligent driving of the driver of jeep bearing No.AP-1/C-858. The only dispute is with regard to the quantum of compensation.

7. While dealing with the subject matter of the claim, the Tribunal held that the appellant suffered the following injuries:-

- 1) Lacerated injury 4 x ½ cm x 4 cm depth in front of the lower 1/3rd of the left leg.
- 2) Lacerated injury 3 x ½ x 6 cm depth on outer aspect of the bones of 1/3rd of the left leg with clinical fracture of both bones of left leg.
- 3) Bruise with swelling 6 cm. round over the right shoulder joint region with clinical fracture of right humerus bone upper.
- 4) Abrasion 2 x ½ cm. over the left dorsum of the foot.

8. There is evidence of P.W.2-doctor with regard to the treatment taken by the appellant. Ex.C1-disability certificate issued by the doctor shows the disability suffered by the appellant is 60%. The Tribunal held that it is on higher side. However, considering the disability, earning capabilities of the appellant and taking the age of the appellant i.e., 35 years on the date of accident, awarded Rs.50,000/- for disability, Rs.5,000/- for pain and suffering and Rs.9,000/- towards loss of earnings (Rs.1,500/- per month for a period of six months). The Tribunal has not granted any amount towards transportation, extra nourishment and attendant charges. Hence, the appellant is entitled for a sum of Rs.20,000/- under the above heads. The Tribunal granted lesser amount for pain and suffering. It ought to have granted Rs.20,000/- instead of Rs.5,000/-. Insofar as 60%

disability of the appellant is concerned, there is no certificate from the medical board. Time and again, this Court in several cases held that P.W.2-Dr.L.Ramulu exaggerated the injuries and the disability suffered by patients. In view of the same, there is justification in granting an amount of Rs.50,000/- towards disability suffered by the appellant.

9. Accordingly, the appeal is allowed in part modifying the order, dated 20.01.2005 passed by the Tribunal in O.P.No.418 of 1998, enhancing the compensation from Rs.64,000/- to Rs.99,000/- with interest @ 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of deposit. On such deposit, the appellant is permitted to withdraw the same along with the interest accrued thereon. The other directions given by the Tribunal remain unaltered.

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

Date: 04.09.2018
ssp

Dr. SHAMEEM AKTHER, J