

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3711 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.50,100/- as against a claim of Rs.2,00,000/-, by the Chairman, Motor Accident Claims Tribunal – cum – V Additional District Judge, Chittoor at Tirupati (for short, “the Tribunal”) *vide* order, dated 07.12.2004, passed in M.V.O.P.No.208 of 2000.

2. Heard the submissions of the learned counsel appearing for the appellant/claimant and the 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 the claimant suffered 30% permanent disability and there is oral and documentary evidence to support the same, but the Tribunal took the disability as 10% and awarded the total compensation of Rs.50,100/- as against the claim of Rs.2,00,000/- which is meagre; that the Tribunal has also not granted compensation towards other heads and ultimately, prayed to enhance the compensation and allow the appeal as prayed for.

4. 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.50,100/-, which is just and reasonable; that there are no circumstances to interfere with the same and ultimately, prayed to dismiss the appeal.

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

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

6. **POINT:-** There is oral and documentary evidence to establish that 30% permanent disability was suffered by the claimant, but the Tribunal has taken the permanent disability as 10%. The Tribunal took the annual income of the claimant as Rs.18,000/- and applied the multiplier “17” i.e., Rs.18,000/- x 17 = Rs.3,06,000/-. The Tribunal, by taking the permanent disability to the extent of 10%, awarded compensation of Rs.30,600/- towards loss of future income. P.W.3 is the Doctor, who issued Ex.A-4 – permanent disability certificate of the claimant. He categorically stated that the claimant suffered 30% disability. He further deposed that the claimant cannot fold his right knee joint. P.W.4 is the Doctor, who treated the claimant. He deposed that there is shortening of right leg to an extent of one inch and that the claimant was suffering from disability to an extent of 30%. P.W.4 also deposed that the claimant suffered 30% disability. The evidence of both the Doctors is supported by the medical evidence, particularly, Ex.A-4 – Permanent disability certificate of the claimant issued by the Medical Board of the concerned district. The Tribunal, while dealing with the subject matter, had determined the permanent disability at 10% stating that there was

shortening of leg by one inch. Regarding disability, the Tribunal ought not to have overlooked the evidence of P.Ws.3 and 4 as well as Ex.A-4 and other documents to show the injuries, treatment and disability suffered by the claimant. So, it is just and reasonable to take the permanent disability suffered by the claimant as 30%. The Tribunal had taken the correct income and suitable multiplier, but took the disability at 10% assessing at Rs.30,600/-. If 30% disability is taken, it comes to Rs.91,800/-. So, the claimant is entitled for an amount of Rs.91,800/- towards 30% permanent partial disability. As far as the award of compensation on other heads is concerned i.e., Rs.5,000/- towards pain and suffering, Rs.10,000/- towards medical expenses and extra nutrition and Rs.4,500/- towards loss of income, the Tribunal had taken all relevant factors and awarded the said compensation. There is nothing to interfere with the same.

7. Thus, the appellant/claimant is entitled for a total compensation of Rs.1,11,300/- (Rupees one lakh eleven thousand three hundred only) (Rs.91,800/- + Rs.5,000/- + Rs.10,000/- + Rs.4,500/-). The Tribunal awarded interest at the rate of 9% per annum on the amount granted as compensation from the date of petition till realisation. As per the settled legal position, the appellant/claimant is entitled for interest at the rate of 7.5% per annum only on the enhanced amount of compensation.

8. Accordingly, this appeal is allowed in part modifying the order, dated 07.12.2004, passed in M.V.O.P.No.208 of 2000 by the Tribunal, enhancing the compensation from Rs.50,100/- to Rs.1,11,300/- with interest at the rate of 7.5% per annum only on

the enhanced amount of compensation 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 shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 02.07.2018
AMD



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