

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.3458 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 25.08.2005 passed in O.P. No.809 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal'), whereby the Tribunal granted Rs.2,57,800/- with interest at 9% per annum as compensation in favour of the appellant-claimant, as against the claim of Rs.8,00,000/- for the injuries sustained by him in a motor accident occurred on 10.04.2002 due to the rash and negligent driving of the driver of the auto rickshaw bearing registration No.AP-25/T-6821.

2. Heard the learned counsel for the appellant-claimant and perused the material on record. Though notices are served, none appeared on behalf of respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle. Since this appeal relates to the year 2005, it can be disposed of on merits.

3. Learned counsel for the appellant-claimant would contend that the appellant-claimant suffered amputation of left lower limb due to injuries sustained in the subject accident; the Tribunal had deducted 1/3rd of the annual income of the appellant and assessed compensation at Rs.1,72,800/- towards loss of earnings for 40% permanent disability; the Tribunal ought to have taken the disability at 100%; the Tribunal had not granted amounts under various heads, i.e., attendant charges, extra nourishment charges, transport charges, etc; and ultimately, prayed to enhance the compensation as claimed.

4. There is no dispute with regard to the appellant-claimant suffering injuries in the subject accident occurred on 10.04.2002 due to the rash and negligent driving of the driver of the tipper bearing registration No.AP-25/T-6821. The short point that falls for determination is, whether the appellant-claimant is entitled for enhancement of compensation?

5. The contention of the appellant-claimant is that he suffered crush injury to the lower limb, fracture injury to left ilium and multiple injuries all over the body and he incurred huge amount for treatment and he became permanently disabled. To substantiate the contentions, the appellant-claimant deposed as P.W.1 and examined the doctor as P.W.2 and got marked Ex.A.1-certified copy of F.I.R., Ex.A.2-certified copy of charge sheet, Ex.A.3-certified copy of wound certificate, Ex.A.4-patient final bill for Rs.30,750-75 ps, Ex.A.5-prescription, Ex.A.6-xerox copy of insurance cover note and Ex.C.1-disability certificate. On behalf of the 2nd respondent-insurer, Ex.B.1-copy of insurance policy of the offending vehicle was marked.

6. There is ample evidence to believe that the appellant suffered amputation of left leg due to the injuries caused to him in the subject accident occurred on 10.04.2002 due to the rash and negligent driving of the driver of the offending vehicle belonging to the 1st respondent. There is insurance policy marked as Ex.B.1, which was valid on the date of accident. There is also specific evidence of P.W.2-doctor with regard to the amputation of left leg of the appellant. Ex.C.1 is the disability certificate issued by P.W.2-doctor, wherein the disability is shown as 85% and amputation of left leg above the knee is visible in the photograph affixed to Ex.C.1. The Tribunal while dealing with the matter, assigning number of reasons, had taken 40% disability, took monthly earnings of the appellant as Rs.3,000/-, deducted 1/3rd therefrom and assessed compensation. The appellant was not examined by the Medical Board and he obtained disability certificate from P.W.2-doctor to show the disability. In view of the same, the permanent disability suffered by the appellant can be taken as 50%. It is contended that the appellant was a Mason and earning Rs.8,000/- per month. There is no convincing evidence to prove the same. The date of occurrence of accident is 10.04.2002. The earnings of the appellant can be taken as Rs.3,000/- per month. Suitable multiplier for the age of the appellant,

i.e., 28 years at the time of accident, is '18' as per the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**¹. Therefore, the loss of future earnings of the appellant comes to Rs.3,24,000/- (Rs.3,000/- x 12 x 18 x 50%) and the same is granted to the appellant as against Rs.1,72,800/- granted by the Tribunal towards loss of future earnings. The Tribunal had also granted Rs.50,000/- towards disability, Rs.25,000/- towards pain and suffering and Rs.10,000/- towards medical expenses, which are just and reasonable and no interference is warranted to enhance the same. In all, the appellant is entitled to compensation of Rs.4,09,000/-. The Tribunal awarded interest at the rate of 9% per annum on the amount granted as compensation from the date of petition till date of realisation. As per the settled legal position, the appellant-claimant is entitled to interest at the rate of 7.5% per annum only on the enhanced amount of compensation.

7. In the result, this appeal is allowed in part and the order dated 25.08.2005 passed by the Tribunal in O.P. No.809 of 2002 is modified and the amount of compensation of Rs.2,57,800/- granted by the Tribunal is enhanced to Rs.4,09,000/-. The appellant-claimant is entitled to interest at 7.5% per annum on the enhanced amount from the date of petition till date of deposit. The appellant-claimant is permitted to withdraw the entire amount.

8. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 03.07.2018
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¹ AIR 2009 SC 3104