

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3070 of 2005

JUDGMENT:

Aggrieved by the quantum of compensation of Rs.2,61,960/- awarded by the Special Judge for the trial of offences under the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad, *vide* order, dated 11.05.2005, passed in M.V.O.P.No.174 of 2002, as against the total claim of Rs.5,00,000/-, the appellant-claimant preferred this appeal under Section 173 of the Motor Vehicle's Act, 1988 ('the Act', for brevity) seeking enhancement of compensation.

2. Heard the learned counsel for the appellant-claimant, learned counsel for the 2nd respondent-Insurance Company and perused the record.

3. Learned counsel for the appellant-claimant would contend that the Tribunal had granted meagre compensation towards medical expenses though there is ample evidence in that regard. The appellant suffered left side paralysis. There is evidence of P.W.2-doctor, who treated the appellant in Apollo Hospital. The Tribunal granted only Rs.5,000/- towards loss of earnings. The Tribunal granted interest @ 6% per annum only. The Tribunal had not granted any amount towards loss of future earnings. Due to accidental injuries, the appellant is unable to work. The percentage of disability is 100%. The Tribunal had

not granted adequate compensation on other heads and ultimately prayed to enhance the same.

4. Learned counsel for the respondent-Insurance company would contend that the Tribunal had gone into the aspects of medical evidence and granted compensation on all heads i.e., for the injuries, pain and suffering, medical expenses and attendant charges, etc. There is no infirmity in the impugned order. There are no circumstances to enhance the compensation as contended by the appellant and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the point for determination is, whether the appellant-claimant is entitled for enhancement of compensation?

6. There is no dispute with regard to the appellant-claimant suffering injuries due to rash and negligent driving of the driver of auto bearing No.AP 28U 8459 and the auto being insured with the respondent-insurer. To substantiate the suffering of the permanent disability and the injuries, the appellant has examined P.W.2-doctor, who is working as Neuro Surgeon in Apollo Hospital. He deposed that the appellant was admitted in hospital on 31.05.2002 and he was unconscious with Glasgow coma scope being at 7/15 and that the normal level was 15 and that 3 is the minimum level for a person who is just alive and that the appellant had left side paralysis due to the injury to brain and the C.T. scan of brain revealed the left temporal fracture extra dural haemtoma and a right thalamic

confussion and that emergency surgery was done and left side blood clot was removed and the appellant was put on ventilators and subsequent C.T. scan brain showed increase in the size of right side blood clot and then another surgery was conducted on 03.06.2002. Thereafter, the appellant was gradually weaning off ventilator after doing trache storny and feeding was started through a tube put in stomach and thereafter, the appellant made gradual partial recovery by the time of discharge and his GCS had improved to 10/15 and that the appellant was discharged on 08.07.2002. He also deposed that the appellant suffered two simple injuries besides head injury and the appellant was still having left side paralysis and completely dependent on other people for day to day functions and that there was no likelihood of his improvement. He issued Ex.A12 disability certificate.

7. The Tribunal while dealing with the medical evidence on record observed that though the appellant's version was that he lost memory power, P.W.2-doctor's evidence is contrary to it. When the appellant was said to have suffered left side paralysis, it is not possible for him to speak accurately, which cannot be faulted. Though Ex.A5-discharge summary did not mention with regard to left side paralysis suffered by the appellant, there is specific evidence of P.W.2-doctor as regards haemtoma and the surgery undergone by the appellant. P.W.2-doctor further opined that the appellant suffered paralysis and there was no likelihood of his recovery. Hence, it is quite natural for the appellant to suffer paralysis on the left side. In the circumstances of the

case, it is not appropriate for the Tribunal to substitute its opinion.

8. Ex.A5-discharge summary discloses that left upper limb DVT was improved with an injection and that the appellant needed only nursing care and was discharged with an advice to use certain medicines and regular active passive physiotherapy. It also indicates that there is specific mention of the left side paralysis apart from some mental disorder. As seen from the material and documentary evidence, the appellant was hospitalised from 31.05.2002 to 08.07.2002 i.e., for about one month eight days. In view of the same, it cannot be said that the appellant did not suffer any left side paralysis. The Tribunal was pleased to grant Rs.2,05,560/- towards medical expenses, Rs.40,000/- towards pain and suffering, Rs.5,000/- towards loss of earnings, Rs.5,000/- towards attendant charges, Rs.5,000/- towards extra nourishment charges, Rs.400/- towards Ambulance charges and Rs.1,000/- towards physiotherapy. In total, the Tribunal granted compensation of Rs.2,61,960/- with interest @ 6% per annum. When the injury is fatal to the head and there is partial paralysis to the left side of the body, the Tribunal ought to have granted some more compensation on the ground that the appellant has no capacity to work for the said paralysis in future.

9. Having regard to the facts and circumstances of the case, this Court is inclined to grant Rs.1,50,000/- in addition to the amount granted by the Tribunal.

10. Accordingly, this appeal is allowed in part modifying the order, dated 11.05.2005, passed by the Tribunal in M.V.O.P.No.174 of 2002, enhancing the compensation from Rs.2,61,960/- to Rs.4,11,960/-. The enhanced compensation carries interest @ 7.5% per annum from the date of petition till the date of deposit. On deposit of the compensation, the appellant-claimant is permitted to withdraw the entire amount along with the accrued interest. The other terms of the order under challenge remain unaltered.

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

28th June, 2018
ssp

Dr. SHAMEEM AKTHER, J

