THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3778 OF 2005

JUDGMENT:

This appeal is filed by the appellant-Insurance Company under Section 173 of the M.V. Act, aggrieved by the order, dated 07.02.2005, in O.P.No.772 of 2002, passed by the Spl. Judge for trial of cases under E.C. Act-cum-III Addl. Metropolitan Sessions Judge-cum-XVII Addl. Chief Judge (MACT), Hyderabad, wherein compensation of Rs.2,50,000/- with interest at 9% p.a. was granted to the respondent-claimant.

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

3. Learned counsel for the appellant-Insurance Company would contend that the Tribunal had granted compensation of Rs.2,50,000/- with interest at 9% p.a. The Tribunal had not assessed the compensation on different heads and granted in lump sum. The calculation made by the Tribunal is not based on sound legal principles. The Tribunal did not assign reasons and granted the said compensation and ultimately, prayed to reduce the same.

4. On the other hand, learned counsel for the respondent-claimant would contend that the Tribunal had rightly calculated and granted an amount of Rs.2,50,000/- in lump sum, which is just and reasonable. There are no circumstances to interfere with the same and ultimately, prayed to dismiss the appeal.

5. In view of submissions put forth by both counsel, the point for determination is whether the compensation granted by the Tribunal is excessive ?

6. It is not in dispute that the respondent-claimant sustained injuries in the road accident that occurred on 13.1.2002 due to rash and negligent driving of driver of Bajaj Tempo bearing No.AP09V 4071. As per the evidence on record, the respondent-claimant sustained fracture of left femur, grievous head injury and simple injuries over his body. P.W.2-Doctor has substantiated the same. There is also medical record showing the injuries. As per medical bills, Exs.A5 and A6, the respondent-claimant spent Rs.68,431/-. The appellant-Insurance Company did not dispute the same. Therefore, the respondent-claimant is entitled for Rs.68,000/- towards medical expenses.

7. P.W.2-Doctor deposed that the respondent-claimant suffered 30% disability. There is also shortening of left leg to the extent of 2 ½". The Tribunal while analyzing the record, came to the conclusion that disability suffered by the respondent-claimant is 10% and assessed annual income of the respondent-claimant at Rs.15,000/-. Though the respondent-claimant contended that he was earning Rs.5,000/- per month, there is no record to substantiate the same. While determining the compensation, the earning capacity of a person at the relevant point of time of the accident is required to be taken into consideration. If 10% disability is taken into consideration, by applying multiplier '16', the compensation for loss of earnings payable to the respondent-claimant comes to Rs.24,000/- and the respondent-claimant is entitled for the same. Besides the above amount, the

respondent-claimant is entitled to compensation of Rs.25,000/- for pain and suffering.

8. It is contended that as per the evidence, fixtures were made to the left femur. There is no evidence that the respondent-claimant underwent operation till today to remove fixtures. The respondent-claimant is required to undergo operation. For that an amount of Rs.20,000/- is granted for future medical expenses. Further, a sum of Rs.10,000/- is granted for transport and extra-nourishment expenses.

9. In all, the respondent-claimant is entitled to compensation of Rs.1,47,000/- (Rs.68,000/- + Rs.24,000/- + Rs.25,000/- + Rs.20,000/- + Rs.10,000/-).

10. In the result, the compensation awarded by the Tribunal is reduced from Rs.2,50,000/- to Rs.1,47,000/- with interest at 7.5% p.a., from the date of petition till the date of deposit. On deposit, the respondent-claimant is permitted to withdraw the same.

11. Accordingly, the Appeal is partly allowed. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 21-06-2018
Hsd