

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2521 of 2006

JUDGMENT:

Aggrieved by the grant of compensation of Rs.39,600/- as against a claim of Rs.2,00,000/- by the Chairman, Motor Accident Claims Tribunal-cum-XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad, vide order, dated 25.04.2006, passed in O.P.No.1141 of 2003, the claimant preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) seeking enhancement of compensation.

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

3. The learned counsel for the appellant-claimant would submit that the appellant-claimant suffered 25% disability in the subject accident. There is shortening of left leg of the appellant-claimant by two inches. The Court below has not taken into consideration the oral and documentary evidence placed on record and granted meagre compensation of Rs.39,600/- as against a claim of Rs.2,00,000/- and ultimately prayed to enhance the compensation as claimed.

4. On the other hand, the learned Standing Counsel for the 2nd respondent-Insurance Company would submit though the appellant-claimant was admitted in the hospital soon after he suffered injuries in the subject accident that occurred on 30.09.2002, he left the hospital against medical advice.

Thereafter, he took treatment from a bone setter at Kepal and as there was no relief, he again got himself admitted in Osmania General Hospital on 23.06.2003, i.e., after about nine months of the occurrence of the subject accident. He allowed the injuries to aggravate. Thus, the appellant-claimant himself is responsible for disability sustained by him in the subject accident. The Insurance Company cannot be held liable to pay compensation to the appellant-claimant and ultimately prayed to dismiss the appeal by confirming the Order under challenge.

5. It is not in dispute that the appellant-claimant suffered injuries in a motor accident occurred on 30.09.2002, due to the rash and negligent driving of the driver of the Car bearing registration No.AP-23-E-4959. So, the point that arises for consideration in this appeal is whether the appellant-claimant is entitled for enhancement of compensation.

6. As per the material placed on record, the petitioner suffered grievous injury, i.e., fracture of left femur, in the subject accident. Soon after the accident, he was admitted in a hospital. The appellant-claimant was unwilling to undergo surgery and got himself discharged from the hospital, against medical advice. Thereafter, he took treatment from a bone-setter at Kepal. But the injury was not healed. Hence, he again got himself admitted in Osmania General Hospital on 23.06.2003, i.e., after about nine months from the date of subject accident, and was there as in-patient till 30.06.2003. As per Ex.A.5-Discharge-cum-follow up Card, the appellant-claimant had six months old spiral fracture of left femur, lower 1/3rd and there is mal-union of fracture. As per

the evidence of P.W.2-Dr.B.Ramakrishna, Orthopaedic Surgeon of Osmania General Hospital, there was shortening of the leg of the appellant-claimant and there is restriction of movement of left knee. He assessed the disability suffered by the appellant-claimant at 25%.

7. Though the appellant-claimant was admitted in hospital soon after he suffered injuries in the subject accident, he left the hospital against medical advice and took native treatment from a bone-setter at Kepal. Since the said treatment did not yield any result, he again got himself admitted in Osmania General Hospital on 23.06.2003, i.e., after about nine months from the date of accident. So, it is the appellant-claimant who invited trouble by leaving the hospital against medical advice. The Court below, taking into consideration all these factors, rightly declined to grant any amount for the disability suffered by the appellant-claimant. The Tribunal granted an amount of Rs.12,000/- towards loss of earnings, Rs.2,000/- towards transportation charges, Rs.2,000/- towards extra nourishment, Rs.3,600/- towards medical expenses, Rs.10,000/- for pain and suffering and Rs.10,000/- towards loss of expectation of life. In all, the Tribunal granted a compensation of Rs.39,600/- to the appellant-claimant.

8. Though there is evidence of P.W.2, doctor, that the appellant-claimant suffered 25% disability, no certificate was produced from the competent Medical Board to that effect. Admittedly, the injury suffered by the appellant-claimant is grievous in nature. He underwent a surgery to set right the same. In that process, he incurred medical expenses as well as expenses

for extra nourishment. Taking all these factors into consideration, an amount of Rs.10,000/- can be awarded to the appellant-claimant, in addition to compensation of Rs.39,600/- granted by the Tribunal. Thus, the appellant-claimant is entitled for a total compensation of Rs.49,600/-. The Tribunal granted interest at the rate of 7.5% per annum on the amount granted as compensation from 07.12.2005, i.e., from the date of commencement of evidence, which is not appropriate. The petitioner is entitled for interest at the rate of 7.5% per annum on the amount granted as compensation from the date of petition till realization.

9. Accordingly, this appeal is allowed in part, modifying the order, dated 25.04.2006, passed in O.P.No.1141 of 2003 by the Tribunal, enhancing the compensation from Rs.39,600/- to Rs.49,600/- with interest at the rate of 7.5% per annum 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 interest accrued thereon. The other terms of the Order under challenge remain unaltered.

Miscellaneous Petitions pending, if any, shall stand closed.

No order as to costs.

09th July, 2018
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Dr. SHAMEEM AKTHER, J