

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2347 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.23,000/- as against a claim of Rs.1,00,000/-, by the Chairman, Motor Accident Claims Tribunal – cum – III Additional District Judge (Fast Track Court) at Nizamabad (for short, “the Tribunal”) *vide* order, dated 07.01.2005, passed in O.P.No.173 of 2001.

2. Heard both sides and perused the record.

3. Learned counsel for the appellant/claimant would contend that the claimant suffered grievous injuries and other injuries and incurred heavy medical expenses, but the Tribunal granted only an amount of Rs.23,000/- as against the claim of Rs.1,00,000/-, which is meagre, and ultimately, prayed to enhance the compensation and allow the appeal as prayed for.

4. On the other hand, learned Standing Counsel for the United India Insurance Company Limited appearing for respondent No.1 would contend that the claimant was not examined by the Medical Board; that the Tribunal had taken all the factors into consideration and rightly assessed the compensation at Rs.23,000/-, 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 no dispute with regard to the claimant suffering injuries due to the rash and negligent driving of the driver of auto bearing No.AP-25-T-7825 on 29.06.2000. The only dispute is with regard to the enhancement of compensation. Admittedly, the claimant was not examined by the Medical Board. P.W.2 – Doctor, who has not treated the claimant, stated that the claimant suffered 40% disability. As per the evidence on record, particularly, P.Ws.1 and 2, and X-ray reports, the claimant suffered fracture of right tibia. Therefore, it cannot be said that there is 40% disability. The Tribunal, while taking the injuries into consideration, granted a compensation of Rs.10,000/- for fracture, Rs.5,000/- for pain and suffering, Rs.5,000/- for loss of earnings, Rs.3,000/- for extra nourishment, in all, Rs.23,000/- with interest at the rate of 9% per annum from the date of petition till the date of deposit. Since there is a fracture, the Tribunal ought to have granted an amount of Rs.15,000/- instead of Rs.10,000/-, an amount of Rs.10,000/- instead of Rs.5,000/- towards loss of earnings and an amount of Rs.10,000/- instead of Rs.5,000/- towards pain and suffering. There is no record to show that the claimant incurred medical expenses. The Tribunal is justified in granting Rs.3,000/- towards expenses for extra nourishment. Thus, the appellant/claimant is entitled for a total compensation of Rs.38,000/- (Rupees thirty eight thousand only).

7. Accordingly, this appeal is allowed in part modifying the order, dated 07.01.2005, passed in O.P.No.173 of 2001 by the Tribunal, enhancing the compensation from Rs.23,000/- to Rs.38,000/-. The enhanced amount of compensation carries 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 accrued interest. There is no change in the other directions given by the Tribunal. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 23.07.2018
AMD



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