

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1882 OF 2005

JUDGMENT:

Aggrieved by the award of Rs.1,72,945/- as compensation, as against the claim of Rs.4,00,000/-, by order, dated 03.05.2005, rendered in O.P.No.444 of 1999 on the file of Chairman, Motor Accident Claims Tribunal – cum – District Judge, Nizamabad ('the Tribunal', for brevity), the appellant – claimant preferred the present appeal, under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of compensation.

2. Heard learned counsel for the appellant and the learned Standing Counsel for respondent No.2 – Insurance Company. Perused the record.

3. Learned counsel for the appellant-injured would contend that the appellant suffered fractures to her both legs and other grievous and simple injuries and took treatment in Kamineni Hospital and as such, claimed compensation of Rs.4,00,000/-, but the Tribunal granted only Rs.1,72,945/-, which is a meager amount. The learned counsel further contended that the Tribunal did not grant just compensation for the injuries and pain and suffering and ultimately, prayed to enhance the compensation.

4. On the other hand, learned Standing Counsel for respondent No.2 – Insurance Company would contend that the Tribunal having analyzed the entire evidence, awarded just and reasonable amount as

compensation. There are no circumstances to interfere with the same and enhance the compensation. Further, in the absence of any certificate from competent authority, the Tribunal ought not to have granted Rs.50,000/- towards disability, though there is evidence of the Doctor, who was examined as PW.2, stating that the appellant suffered 30% disability and ultimately, prayed to dismiss the appeal.

5. Under these circumstances, the point for determination is whether the appellant-injured is entitled for enhancement of compensation.

6. There is no dispute with regard to the appellant sustaining injuries in a road accident, which occurred on 21.07.1998 due to rash and negligent driving of lorry bearing No.AP-09-U-1341. There is also no dispute with regard to the offending lorry having valid insurance policy on the date of accident. Further, there is no evidence to hold that there was violation of the terms and conditions of the policy. The only dispute among the parties is with regard to assessment and grant of compensation.

7. PW.2 –Doctor, who worked in Kamineni Hospital and treated the appellant, deposed that on 24.07.1998, the appellant was admitted in Kamineni Hospital with the following injuries:

1. Comminuted fracture of both femur.
2. Supra condylar fracture of right femur.
3. Lacerated wound over face.
4. Multiple abrasions.

On 10.08.1998, interlocking nailing of left femur and DCS fixation of right femur were done. On 20.08.2003, the appellant was discharged from the hospital with an advice to have regular follow up treatment. He also deposed that the appellant requires two more operations for removal of implants and each operation costs about Rs.20,000/-. There was shortening of right lower limb of one inch and restricted movements of right knee. The appellant cannot walk long distance and cannot sit on the floor. He assessed the permanent disability as 30% and accordingly, deposed the same. There is also other medical record to substantiate the same.

8. Considering the injuries and the treatment taken by the appellant, the Tribunal granted compensation as stated below:



1. Disability	-	Rs.50,000/-
2. Pain and suffering	-	Rs.10,000/-
3. Medical expenses	-	Rs.72,945/-
4. Future Medical Expenses	-	Rs.40,000/-

Thus, in all, the Tribunal granted Rs.1,72,945/- as compensation with interest at 7.5% per annum from the date of petition till the date of realization.

9. It is evident from the impugned order that the Tribunal had granted Rs.10,000/- towards pain and suffering. But, as per the Doctor's evidence, the appellant suffered two fractures on her right and left femur and other injuries as stated above. Hence, the amount of Rs.10,000/- granted towards pain and suffering appears to be on

lower side. Therefore, the appellant is entitled to a sum of Rs.50,000/- for the grievous injuries, simple injuries and pain and suffering. So far as grant of medical expenses is concerned, it is based on medical record and receipts and hence, the same requires no interference. The Tribunal has granted Rs.50,000/- towards disability. It is also on lower side, since there is specific evidence of the Doctor that the appellant suffered fracture of both femur, shortening of right lower limb by one inch and 30% permanent disability. Therefore, the amount granted on this score is enhanced to Rs.80,000/- from Rs.50,000/-. So far as the amount granted towards future medical expenses is concerned, the Tribunal has rightly assessed and awarded Rs.40,000/- under the said score. No interference is warranted under that score.

10. In the result, the appeal is allowed in part enhancing the compensation from Rs.1,72,945/- to Rs.2,42,945/- (Rs.50,000/- + Rs.72,945/- + Rs.80,000/- + Rs.40,000/-). The enhanced amount carries interest at the rate of 7.5% per annum from the date of petition till the date of realization. There is no change in the other conditions imposed by the Tribunal. The appellant is permitted to withdraw the entire compensation amount.

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

Dr. SHAMEEM AKTHER, J

July 03, 2018.
MD