HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2140 of 2009

JUDGMENT:

Aggrieved by the Award dated 28.04.2007 in O.P.No.1372 of 2005 passed by the Chairman, M.A.C.T-cum-XVII Additional Chief Judge, Hyderabad (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 27.01.2005 at about 2.30 PM, when he was travelling in jeep bearing No.AP 22 U 3986 and when it reached outskirts of Tumpally Village, the driver of the jeep drove the same in a rash and negligent manner and at high speed and lost control over the vehicle and due to which the jeep turned turtle. Thereby, the claimant suffered grievous injuries all over the body. Immediately he was admitted in Government Hospital, Shadnagar and thereafter shifted to Osmania General Hospital, Hyderabad. On these pleas, the claimant filed O.P.No.1372 of 2005 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent Nos.1 and 2 who are the owner and insurer of the offending jeep and claimed Rs.7,00,000/- as compensation.

b) R1/owner remained ex-parte.

c) R2/Insurance Company filed counter denying petition mentioned material allegations and urged to put the claimant in strict proof of the same. R2 contended that unless the claimant proves that driver of jeep had valid and effective license at the time of accident and insurance policy was in force R2 is not liable to pay compensation. Finally, R2 contended that the compensation claimed is excessive and thus prayed for dismissal of OP.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A8 were marked on behalf of claimant. Ex.B1 was marked on behalf of respondents.

e) The Tribunal, on appreciation of both oral and documentary evidence, had awarded Rs.4,72,510/- as compensation against respondents with proportionate costs and interest @ 7.5% p.a. under different heads as below:

Pain and suffering	Rs. 25,000-00
Extra-nourishment	Rs. 5,000-00
Incidental expenses	Rs. 5,000-00
Medical expenses	Rs. 2,510-00
Loss of earnings during treatment period	Rs. 18,000-00
Loss of future earnings due to disability	Rs.3,67,200-00
Loss of amenities in future life	Rs. 50,000-00
Total	Rs.4,72,710-00

Hence, the appeal by claimant.

3) The parties in the appeal are referred as they are arrayed before the lower Tribunal.

4) Heard arguments of Sri C.Vikram Chandra, learned counsel for appellant/claimant and Sri G.Vasantha Rayudu, learned counsel for respondent No.2/Insurance Company. Notice sent to R1/owner not yet returned.

5) Challenging the award, learned counsel for appellant/claimant mainly argued that in the resultant accident the left leg of the claimant up to mid-thigh was amputated, thereby rendering him disable to undertake his earlier avocation of agricultural coolie work-cum-vegetable vending business and for that matter any other avocation besides loosing his conjugal life as he was only 30 years by the time of accident, having wife and two children. In that view of the matter, learned counsel argued, though his physical disability is certified by PW.2 was only 60%, the Tribunal ought to have taken his functional disability i.e, loss of earning capacity as 100% and computed compensation accordingly. However, the Tribunal grossly erred in taking his functional disability equivalent to his physical disability and computed the compensation and thereby the compensation for loss of earning power was drastically reduced. Learned counsel submitted that in case of persons depending on the manual labour, percentage of physical disability by way of amputation of an organ may not be always equivalent to percentage of corresponding loss of earning capacity and on the other hand

in most of such cases, the corresponding percentage of functional disability will be higher say either 100% or at least no less than 90%. He buttressed his argument through the following decision:

1) ***Mohan Soni vs. Ram Avtar Tomar and others***[1]

a) Learned counsel further argued that the Tribunal erred in fixing his monthly earnings as only Rs.3,000/- inspite of holding that prior to accident he was undertaking agricultural coolie work and also vegetable vending business. Learned counsel argued that the Tribunal ought to have fixed his monthly income at least as Rs.5,000/-. He thus prayed to allow the appeal and reassess the compensation.

6) Per contra, learned counsel for respondent No.2/Insurance Company argued that the compensation awarded under different heads was just and reasonable and there is no need to interfere with the same. He would argue that having regard to the nature of avocation of the claimant, the Tribunal rightly took his income as Rs.3,000/- p.m. Similarly, going by the nature of his avocation the Tribunal rightly accepted the percentage of physical disability propounded by PW.2 as equal percentage of functional disability and there is no fault with the lower Tribunal. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

"Whether the compensation awarded by the Tribunal is just and reasonable or needs reassessment?"

8) **POINT**: The accident, involvement of jeep bearing No.AP 22 U 3986 and amputation of left leg of the claimant are not in dispute. The contention is with regard to the quantum of compensation. On a careful perusal of the facts, evidence and the award, I am of the view that there requires reassessment of compensation awarded by the Tribunal for the disability. The Tribunal awarded Rs.3,67,200/- by taking the monthly earnings of the claimant as Rs.3,000/- and by employing '17' as multiplier and accepting 60% of the physical disability as spoken by PW.2 as also the functional disability. Thus it arrived Rs.3,67,200/- (Rs.3000/- x 12 x 17 x 60%).

9) The first contention of the claimant is that the Tribunal erred in taking the monthly income of the claimant as Rs.3,000/- and it ought to have taken at least Rs.5,000/- p.m. I find no much force in this argument. The claimant was an agricultural labour-cum-vegetable vendor prior to the accident and he was aged 30 years. It was claimed that he was earning Rs.5,000/- p.m but no proof is filed with regard to his vegetable vending business. The accident was occurred in the year 2005, it appears having taken the relevant facts into consideration, the Tribunal fixed his monthly income @ Rs.3,000/- i.e, Rs.100/- per day. Hence I find no irregularity in it.

10) The next contention of the claimant is that the Tribunal erred in taking 60% as physical disability also as equivalent functional disability. I find much force in the said contention. PW.2—the Orthopedic Professor in Osmania General Hospital, who treated the claimant in the said Hospital deposed that the left leg of the claimant was amputated up to mid-thigh level and thereby the claimant suffered 60% permanent disability. The Doctor further deposed that due to the said disability the claimant suffered his family life and his avocation. It is evident that the claimant now cannot undertake his agricultural coolie work as before and with much difficulty, he may attend his vegetable vending business with diminished returns. In that view of the matter, his functional disability is much higher than his physical disability because he was earning his livelihood by doing physical labour prior to the accident. In similar circumstances, the Apex Court in the cited decision ***Mohan Soni***'s case (1 supra), relying on its earlier decisions in ***Raj Kumar vs. Ajay Kumar***[2] and ***Yadava Kumar vs. National Insurance Co. Ltd***[3], has observed thus:

> *'In light of the aforesaid decisions, we find it extremely difficult to uphold the decision of the High Court and the Tribunal based on the finding that the loss of the Appellant's earning capacity as a result of the amputation of his left leg was only 50%. It is noted above that the Appellant used to earn his livelihood as a cart puller. The Tribunal has found that at the time of the accident his age was 55 years. At that age it would be impossible for the Appellant to find any job. From the trend of cross-examination it appears that an attempt was made to*

suggest that notwithstanding the loss of one leg the Appellant could still do some work sitting down such as selling vegetables. It is all very well to theoretically talk about a cart puller changing his work and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who suffered some serious permanent disability resulting from the loss of a limb etc. should not take into account such indeterminate factors. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income. The loss of earning capacity of the Appellant, according to us, may be as high as 100% but in no case it would be less than 90%."

In the instant case the claimant suffered amputation of his left leg at the age of 30 years which drastically effected his conjugal life and also his avocation for the rest of his life. Though there is no cogent evidence for his vegetable vending business, it can be believed that he was an agricultural coolie prior to the accident. The amputation of leg will totally mar his avocation. In such consideration and following the above decision, though the physical disability is 60%, the corresponding functional disability can be accepted as 90%. Hence, the compensation for loss of income due to disability comes to **Rs.5,50,800/-** (Rs.3,000/- x 12 x 17 x 90%).

Thus the total compensation payable to the claimant is detailed as below:

Pain and suffering	Rs. 25,000-00
Extra-nourishment	Rs. 5,000-00
Incidental expenses	Rs. 5,000-00
Medical expenses	Rs. 2,510-00
Loss of earnings during treatment period	Rs. 18,000-00
Loss of future earnings due to disability	Rs.5,50,800-00
Loss of amenities in future life	Rs. 50,000-00
Total	Rs.6,56,310-00

Thus the compensation is enhanced by Rs.**1,83,600**/- (Rs.6,56,310/- minus Rs.4,72,710/-).

11) In the result, this M.A.C.M.A is partly allowed and ordered as follows:

a) The compensation is enhanced by **Rs.1,83,600/-** with proportionate costs interest at the rate of 7.5% p.a from the date of O.P till the date of realization.

b) Respondent Nos.1 and 2 are directed to deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 17.03.2016
scs

[1] (2012) 2 SCC 267 = 2012 ACJ 1583 (SC)

[2] (2011) 1 SCC 343

[3] AIR 2010 SC 3741