

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

M.A.C.M.A. No.1539 of 2009

JUDGMENT:

Aggrieved by the Award dated 29.09.2008 in MVOP No.563 of 2006 passed by the Chairman, M.A.C.T-cum- VI Additional District Judge, Rajahmundry (for short “the Tribunal”), the Claimant preferred the instant appeal.

2 a) The factual matrix of the case is thus:

On 24.09.2004 at about 7.30 pm when the claimant-boy was walking on left side of the road along with his cycle, a car bearing No. AP 16 AG T/R 1060 being driven by its driver in a rash and negligent manner at high speed came in opposite direction and dashed against the claimant. In the resultant accident, the claimant sustained bleeding injuries and became unconscious. Thereafter, he was shifted to Area Hospital, Ramachandrapuram and there from to GGH, Kakinda, for better treatment. It is averred that car driver was responsible for the accident. It is further averred that because of the accident, the claimant spent Rs.20,000/- towards medical expenses. On these averments, the claimant, filed MVO.P.No.563 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondent Nos. 1 and 2, who are the owner and insurer of the car and claimed Rs.1,20,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1/Owner of the Car filed counter and denied the petition averments and urged to put the claimant in strict proof of the same. He contended that the accident was occurred due to the negligence of the claimant. He further contended the car was insured with R2—Insurance Company and it has to indemnify the liability of R1, if any. He further contended that claim is highly excessive and exorbitant and thus prayed for dismissal of OP.

c) Respondent No.2/Insurance Company denied all material averments and urged to put the claimant in strict proof of the same. It further contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, Pws. 1 to 3 were examined and Exs.A1 to A3 and X.1 to X.4 were marked on behalf of the claimant. Police Copy filed by the Insurance Company was marked as Ex.B.1.

e) The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.44,500/- with costs and interest at 7.5% p.a under different heads as follows:

Permanent Disability	Rs. 25,000-00
Pain and suffering	Rs. 10,000-00
Medical Expenditure	Rs. 5,000-00
Attendant Charges	Rs. 4,500-00

Total Rs. 44,500-00

Hence, the appeal by the Claimant.

3) Heard arguments of Sri Harinath Reddy Soma, learned counsel for appellant/Claimant and Smt G. Manjula, learned counsel for respondent No.2 and Notice on R.1 was served, but there is no representation on his behalf and hence treated as heard.

4) The parties in this appeal are referred to as they stood before the Tribunal.

5 a) The main contention of learned counsel for appellant/claimant is that because of the accident, the claimant suffered head injury and developed a clot in the brain, for which he was treated by Pw.2 and as per the evidence of Pw.1, the claimant gets frequent headache and fits and he discontinued his duties while he was in 7th class and considering this disability, the lower Tribunal ought to have granted just and reasonable compensation, but the Tribunal allowed only a pittance. He, thus, prayed to allow the appeal and re-assess the compensation suitably.

b) Per contra, learned counsel for respondent/Insurance company opposed the appeal on the contention that the evidence of PW.2 would only show that the claimant developed a big clot in the brain, for which he was treated and after recovery from the injury, he was discharged on 14.10.2003 and in the evidence of Pw.2, he did not say that

the claimant suffered any sort of disability and therefore, it is clear that the he has not suffered any disability and considering it, the Tribunal awarded compensation of Rs.44,500/-, which is just and reasonable one by all means and therefore, there is no need to revise the same. He, thus, prayed to dismiss the appeal.

6) In the light of the above rival arguments, the point for determination in this appeal is:

“Whether the compensation awarded by the Tribunal is just and reasonable or needs interference?”

7) **POINT:** Accident, involvement of Car bearing No. AP 16 AG T/R 1060 and injuries to the claimant, who was 15 years old and studying 7th class by the date of accident, are not in dispute. The bone of contention is regarding the quantum of compensation. Pw.2, who is the Chief Nuero Surgeon in GGH Hospital, Kakinada, deposed about the injuries and treatment to the claimant. He stated that the claimant suffered the following injuries:

- 1) Laceration 2 x 1/4” on the left temporal region;
- 2) Lacerated injury 1 ½ x 1.4 over the temporal region right side;
- 3) bleeding from left ear and nose.

He further deposed that CT Scan Brain vide Ex.X.1 shows a big clot in the brain of the claimant. He stated that the claimant was given intensive medical treatment and kept in ICU and after the claimant showed improvement, he was discharged on 14.10.2004. He further deposed that

the claimant may have frequent headache and fits, for which he requires medical management. He denied the suggestion that the claimant has no complaints about headache and reeling sensation. Then the evidence of PW.1, who is the father of the claimant is that on account of severe head injury, the claimant-1 is complaining headache and due to his loss of memory, he discontinued his studies while he was in 7th class. Further, he is experiencing some sort of inconvenience in the event of exposure to hot sun.

The above is the evidence with regard to the injuries, treatment and effect of the head injury on the claimant. It is true that PW.2 has not stated about the percentage of the disability of the claimant. Considering it, the Tribunal awarded a lump sum of Rs.25,000/- towards permanent disability.

8) Now the contention of learned counsel for appellant is that unlike Orthopaedic cases, in this nature of the case, it is difficult to give percentage of the disability and hence, the Tribunal ought to have considered the extent of hardship faced by the claimant and granted just compensation. I find some force in the submission of learned counsel for appellant. Though percentage of disability is not stated by Pw.2, still the evidence of Pw.2 would show that due to head injury, the claimant has to suffer frequent headache and fits. As per the evidence of Pw.1, the claimant had discontinued his studies while he was in 7th class. He was only a tender aged boy by the time of accident and lot of

future is left with him. Considering all these aspects, the compensation for disability is enhanced from Rs.25,000/- to Rs.60,000/-. The compensation awarded by the Tribunal under other heads is found sufficient. Thus, the compensation payable to the claimant under different heads is as follows:

Permanent Disability	Rs. 60,000-00
Pain and suffering	Rs. 10,000-00
Medical Expenditure	Rs. 5,000-00
Attendant Charges	Rs. 4,500-00

Total	Rs. 79,500-00

9) In the result, this MACMA filed by the claimant is partly allowed and ordered as follows:

- (i) The compensation is enhanced by Rs.35,000/- (Rs.79,500 minus Rs.44,500/-) with proportionate costs and interest at 7.5% p.a. from the date of OP till the date of realization.
- (ii) The respondents in the OP are directed to deposit the compensation amount within two 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: 26.10.2015
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**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

M.A.C.M.A. No.1539 of 2009

Dt. 26.10.2015

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