HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

**M.A.C.M.A. Nos.205 and 643 of 2010**

**COMMON JUDGMENT:**

Aggrieved by the Award dated 29.12.2008 in O.P.No.2390 of 2006 passed by the Chairman, MACT–cum–VII Addl. Metropolitan Sessions Judge-cum-XXI Addl. Chief Judge, Hyderabad (for short "the Tribunal"), both National Insurance Company Limited and claimant preferred M.A.C.M.A Nos.205 and 643 of 2010 respectively.

2) The parties in both the appeals are arrayed as they stood before the lower Tribunal.

3) The facts in brief are that:

a) On 28.07.2006 at about 3.30 pm the claimant was proceeding in the lorry bearing No.KA 08A/4999 as a cleaner/fitter and when it reached near Kerur village on Naldurg to Sholapur Road, the driver of the vehicle drove the same at high speed and in a rash and negligent manner. As a result of which, the vehicle turned turtle and fell in river. In the resultant accident, the claimant sustained multiple and grievous injuries and thereafter he was shifted to Sholapur Hospital for treatment and there from to KIMS Hospital, Hyderabad for better treatment, where his left hand was amputated just below the shoulder. It is averred that the accident was occurred due the rash and negligent driving by the driver of the crime vehicle. On these pleas, the claimant filed OP No.2390 of 2006 under Sec.166 of Motor Vehicles Act, 1988 (for short "M.V.Act") claiming compensation of Rs.12,00,000/- against respondent Nos.1 and 2, who are the owner and insurer of the crime vehicle.

b) Respondent No.1 remained *ex parte.*

c) Respondent No.2/Insurance Company opposed the claim denying all the material averments made in the petition and contended that the claimant travelled in the lorry as a gratuitous passenger and hence the Insurance Company is not liable to pay compensation and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 4 were examined and Exs.A.1 to A.15 and Exs.X.1 and X.8 were marked on behalf of the claimant. On behalf of respondents, none were examined and no documents were marked.

e) The Tribunal on appreciation of both oral and documentary evidence on record, has awarded total compensation of Rs.7,89,500/- to the claimant with costs and interest at 6% p.a under different heads as follows:

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|---|---|
| Loss of future earnings | Rs. 6,73,200-00 |
| Prosthetic fitting | Rs. 70,000-00 |
| Medical expenditure | Rs 36,300-00 |
| Pain and suffering | Rs. 10,000-00 |
| Total | Rs. 7,89,500-00 |

Hence the appeals: 1) MACMA No.205 of 2010 by the

Insurance Company and 2) MACMA No.643 of 2010 by the Claimant.

4) In MACMA No.643 of 2010, pending appeal, the claimant filed MACMA MP No.2535 of 2015 seeking permission of this Court to enhance the claim from Rs.12,00,000/- to Rs.30,00,000/-. By order dt:13.07.2015, this Court allowed the said petition and directed the claimant to pay additional court fee on the enhanced claim.

5) It may be noted that the Insurance Company has not filed the policy copy before the Tribunal. However, in the appeal learned counsel for appellant/Insurance Company filed true copy of policy along with memo dt:14.10.2015 and prayed to mark the same as exhibit on behalf of Insurance Company. Notice of the memo was given to learned counsel for respondent/claimant, who acknowledged on the back of the policy copy. Hence, it is marked as Ex.B.1.

6 a) **MACMA No. 205 of 2010:** Heard arguments of Sri S.Agasthya Sharma, learned counsel for appellant/Insurance Company and

Sri K.Harimohan Reddy, learned counsel for respondent No.1/claimant. Though notice sent to R.2/owner was served but there is no representation on his behalf, hence treated as heard.

b) **MACMA No.643 of 2010**: Heard arguments of Sri K. Hari Mohan Reddy, learned counsel for appellant/claimant and Sri

S. Agasthya Sharma, learned counsel for respondent No.2/Insurance Company. Though notice sent to R.1/owner was served but there is no representation on his behalf, hence treated as heard.

7 a) In MACMA No.205 of 2010, learned counsel for appellant/Insurnace Company while challenging the award firstly argued that the Tribunal committed grave error in fastening liability to the full extent on the Insurance Company. Referring Ex.B.1, he argued that the policy is an Act only policy and therefore, the liability of Insurnace Company towards the claimant being the cleaner of the ill-fated lorry is limited to the extent payable under Workmens Compensation Act only and the said compensation is further limited to Rs.1,00,000/- in view of the specific mentioning in the schedule of the premium. Hence, in any event, the Insurance Company is not liable to pay beyond the amount stipulated in the policy. On this aspect he relied upon the following decisions:

(i) ***United India Insurance Co.Ltd, Anantapur vs. M.Bhagyalakshmi Bai and others***[1].

(ii) ***Senior Divisional Manager, New India Assurance Co. Ltd vs. K.Kiran and another***[2].

b) Nextly, challenging the quantum of compensation, he argued that the Tribunal erred in accepting the monthly income of the claimant as Rs.5,000/- without there being any reliable evidence. He argued that Exs.X.1 to X.7—salary receipts are fabricated for the purpose of the case and PW.4, who is said to be the employer of the claimant, did not produce aquittance register and account books in proof of payment of Rs.5,000/- as monthly salary to the claimant. He further argued that the Tribunal erred in accepting the disability of the claimant as 100% instead of 70%. He submitted that in view of above errors, the compensation was unduly escalated. He thus prayed to allow the appeal filed by Insurance Company and to dismiss the counter appeal filed by claimant.

8 a) Per contra, learned counsel for respondent/claimant argued that Ex.B.1—policy is a package policy and hence it is a comprehensive policy to cover the risk of the claimant to full extent and hence the Insurance Company cannot contend that its liability is limited to the extent of Rs.1,00,000/-. He pointed out that the insured paid an additional premium of Rs.75/- to the 3 employees to cover their liability to full extent and the claimant being one of the employees of the insured (PW.4), the Insurance Company shall bear the liability of the claimant to full extent.

b) Nextly criticizing the compensation awarded as very low one, he argued that the Tribunal failed to add future prospects of the claimant to his salary and thereby his income was shown at a low figure. He argued that though physical disability of the claimant is 70%, he cannot attend any work particularly cleaner's job due to amputation of left hand and therefore, the Tribunal rightly took the functional disability as

100% and the Insurance Company was not correct in arguing that the disability should be counted at 70%. He further argued that having accepted the disability of the claimant as 100%, the Tribunal failed to award any compensation for the loss of basic amenities. He submitted that due to amputation of left hand the claimant has lost his basic amenities and his marriage prospects were also marred and therefore he deserves compensation for loss of basic amenities. He cited several decisions on the method of computation of compensation. Finally he argued that the Tribunal awarded a low interest rate @ 6% p.a which needs to be enhanced.

He thus prayed to allow his appeal and enhance the compensation suitably and dismiss the counter appeal filed by the Insurance Company.

9) In the light of above rival arguments, the points for determination are:

*(i) Whether the Tribunal was right in fastening full liability on Insurance Company instead of Rs.1,00,000/-?*

*(ii) Whether the compensation awarded by the Tribunal is just and reasonable or needs interference?*

*(iii) To what relief?*

10) **POINT No.1**: This point is concerned, the Insurance Company repudiates its liability over and above Rs.1,00,000/- on the main contention that the policy is an Act only policy and

hence it covers the risk of the claimant being an employee of the insured to the extent payable under Workmens Compensation Act and the said compensation is further limited to Rs.1,00,000/- by stipulation in Ex.B.1—policy and therefore, the Tribunal cannot fasten liability on Insurance Company more than the said amount. Per contra, the contention of the claimant is that the policy is a package policy which is a comprehensive one and hence the Insurance Company cannot claim any concession or reduction in the quantum of compensation. It is further argued, an additional premium of Rs.75/- was paid to cover 3 employees which also indicate that the policy is a comprehensive one to cover the liability of the employers to full extent and on this ground the Insurance Company cannot avoid its liability.

11) On a close scrutiny of Ex.B.1, I am unable to accept the contention of Insurance Company because Ex.B.1 does not reveal as an Act only policy but on the other hand on the right side top of the first page of Ex.B.1, it is mentioned as "package" policy. The terms and conditions mentioned in Ex.B.1 also do not envisage that the policy is an Act only policy within the terms of Sec.147 of M.V. Act. No doubt in the schedule of premium, under the caption "P.A to Driver/Cleaner/Conductor Number 2, an amount Rs.1,00,000/- = Rs.120/-" is mentioned and the argument of Insurance Company pivots on this stipulation. However, beneath the above said stipulation there is another stipulation to the effect

"W.C to employee 3 Rs.75/-". The claimant being the employee of PW.4—the insured, was working as cleaner-cum-fitter in the ill-fated lorry. Thus he falls under both the aforesaid stipulations. Unfortunately, no evidence was adduced by the Insurance Company before the Tribunal as to how the claimant would fall under the first stipulation alone so as to restrict the liability of Insurance Company to Rs.1,00,000/-. In view of this and the M.V. Act being a beneficial legislation, I am not inclined to restrict the liability of Insurance Company to Rs.1,00,000/- only as sought by the Insurance Company. Consequently, the decisions cited by learned counsel for Insurance Company will not come to its aid. This point is answered accordingly.

12) **<u>POINT No.2</u>**: The compensation of Rs.6,73,200/- under the head loss of future earnings is subject matter of criticism by both parties. To arrive this amount, the Tribunal accepted the earnings of the claimant as Rs.5,000/- as spoken by PW.4 and also accepted his functional disability as 100% and selected multiplier '17'. The Tribunal deducted $1/3^{rd}$ from the gross earnings of the claimant towards personal expenditure. The contention of Insurance Company is that the Tribunal simply carried away by the evidence of PW.4 in accepting the monthly income of the claimant as Rs.5,000/-. Learned counsel argued that no doubt PW.4 filed Exs.X.1 to X.7—vouchers to show that he was paying a salary of Rs.5,000/-p.m to the claimant but all these vouchers would give an

impression as if they were prepared on the same day and they were very fresh. In any event, PW.4 has not produced aquittance register and audited account books in support of his claim and therefore, the Tribunal ought not to have accepted his claim. I find some force in the said argument. Though PW.4 claimed that he used to pay a monthly salary of Rs.5,000/- to the claimant, he did not produce any account books or aquittance register in proof of Exs.X.1 to X.7—vouchers. PW.4 claims to maintain 2 big Lorries and maintaining 4 workers and he is also paying amounts to financers. Therefore, he must be maintaining accounts. However, he did not produce his account books. Exs.X.1 to X.7 are as fresh as petals and they do not appear to have been issued on different dates as mentioned in them. Therefore, the Tribunal ought not to have been carried away by those documents. Hence, having regard to the nature of employment and the accident being occurred in the year 2006, the monthly income of the claimant can be fixed at Rs.3,000/-. As rightly contended by learned counsel for claimant, the lower Tribunal did not consider the future prospects of the claimant. In ***V.Mekala vs. M.Malathi and another***[3], the Hon'ble Apex Court held that 50% of the income has to be taken towards future prospects. Following the same, the monthly income of the claimant is fixed at Rs.4,500/- (Rs.3,000/- + Rs.1,500/-).

a) It may be noted that the Tribunal deducted 1/3rd from his gross earnings towards personal expenditure of the claimant.

Since it is only an injury case but not a death case, such deduction is unwarranted as the Apex Court in a decision reported in ***Raj Kumar vs. Ajay Kumar and another***[4], has held thus:

> *"Para 20: In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to claimant, (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore there is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses."*

So in the instant case, such deduction of 1/3rd or some other fraction is not necessary. Then the percentage of disability is concerned, the Tribunal rightly accepted the functional disability of the claimant at 100% though his physical disability is only 70%. It should be noted that due to amputation of left hand below shoulder, the claimant is not able to attend his cleaner's job and therefore, his functional disability should be taken as 100%. Thus the loss of earnings comes to **Rs.9,18,000/-** (Rs.4,500/- x 12 x 17).

b) Then the contention of learned counsel for claimant is that the Tribunal failed to award any compensation for the loss of basic amenities. I find much force in this contention. Due to the amputation of left hand, the claimant cannot attend some of his day-to-day works by his own and he has to depend on others for this purpose. As rightly contended, his marriage prospects are also effected to some extent. In such consideration, he is awarded **Rs.30,000/-**.

Thus, the total compensation payable to the claimant under different heads is as follows:

| | |
|---|---|
| Loss of future earnings | Rs. 9,18,000-00 |
| Prosthetic fitting | Rs. 70,000-00 |
| Medical expenditure | Rs 36,300-00 |
| Pain and suffering | Rs. 10,000-00 |
| Loss of basic amenities | Rs. 30,000-00 |
| Total | Rs.10,64,300-00 |

Thus, the compensation is enhanced by Rs.2,74,800/- (Rs.10,64,300/- minus Rs.7,89,500/-).

13) Thus, the two appeals are disposed of and ordered as follows:

i) M.A.C.M.A. No.205 of 2010 filed by Insurance Company is dismissed and

ii) M.A.C.M.A. No.643 of 2010 filed by claimant is partly allowed and the compensation is enhanced by **Rs.2,74,800/-** (Rs.10,64,300/- minus Rs.7,89,500/-).

iii) The enhanced compensation amount of **Rs.2,74,800/-** shall carry interest @ 7.5% p.a from the date of O.P. till the date of realization. Whereas the original compensation of Rs.7,89,500/- shall carry interest @ 6% p.a throughout.

iv) Respondent Nos.1 and 2 in the O.P. 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.

v) No costs in both the appeals.

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

**U. DURGA PRASAD RAO, J**

Date: 23.12.2015
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[1] 2014 (6) ALD 730
[2] 2007 ACJ 1153 (AP)
[3] III (2014) ACC 549 (SC)
[4] 2011 ACJ 1 (SC)