

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.243 of 2010

JUDGMENT:

Aggrieved by the Award dated 16.03.2009 in M.V.O.P.No.1044 of 2007 passed by the Chairman, M.A.C.T-cum- District Judge, Khammam (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) On factual side, on 19.07.2007 when the claimant was proceeding on his lorry bearing No.AP 23T 8833 from Koyalgudem towards Bommala Ramavaram factory and when it reached Pinapaka stage at about 9.30 PM, another lorry bearing No.AP 27U 7974 being driven by its driver in a rash and negligent manner and at high speed came in opposite direction and dashed the lorry of the claimant. Thereby the claimant sustained multiple injuries all over the body. Immediately he was shifted to Government Head Quarters Hospital, Khammam where he undertook treatment as inpatient. It is averred that accident was occurred due to rash and negligent driving by the crime lorry bearing No.AP 27U 7974. On these pleas, the claimant filed M.V.O.P.No.1044 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 to 3, who are owners and insurer and claimed Rs.2,50,000/- as compensation.

a) R1 remained ex-parte.

b) R2 filed written statement denying all the

material averments made in the claim petition and put the claimant to strict proof of the same. He contended that he sold the crime lorry to R1 and on the date of accident he was not the owner. He also contended that the lorry was insured with R3—Insurance Company and the policy was in force, therefore, R1 and R3 are liable to pay compensation and he is not at all concerned with the claim.

c) R3—Insurance Company in its counter took a plea that the driver of the crime lorry was not having valid and effective driving licence at the time of accident and as such, it is not liable to pay compensation. It is contended that factum of accident was not informed and therefore, it is not liable for the claim. It is also contended that compensation claimed is highly excessive and exorbitant.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A10 were marked on behalf of claimant. Copy of insurance policy filed on behalf of respondents was marked as Ex.B1.

e) The Tribunal on appreciation of both oral and documentary evidence awarded Rs.80,000/- as compensation against respondents 1 to 3 with interest @ 7.5% p.a. under different heads as below:

Pain and suffering	Rs. 10,000-00
Pecuniary damages	Rs. 30,000-00
For grievous injury	Rs. 35,000-00
For simple injuries	Rs. 5,000-00

Total	Rs. 80,000-00

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Hence, the appeal by claimant.

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

4) Heard arguments of Sri S.Chalapathi Rao, learned counsel for appellant/claimant and Sri N.Mohana Krishna, learned counsel for R3/Insurance Company. Though notices sent to R1 and R2 were served, no representation on their behalf. Hence treated as heard.

5) Challenging the award learned counsel for appellant/claimant argued that claimant suffered 50% of disability as per the evidence of PWs.2 and 3—the doctors who treated him but the Tribunal discarded their evidence on the ground that no disability certificate is produced. He would argue that claimant is a lorry driver by profession and fracture of his left femur in the resultant accident would severely affect his profession and income and the Tribunal ought to have accepted the evidence of PWs.2 and 3 who are the qualified orthopedic surgeons. He thus prayed to allow the appeal and award compensation for loss of earning power due to disability.

6) Per contra, learned counsel for R3/Insurance Company supported the award and argued that Tribunal awarded just and reasonable compensation under different heads and there is no need to interfere with the same. He thus prayed to dismiss the appeal.

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

“Whether the Tribunal erred in not considering the disability of the claimant?”

8) **POINT:** Accident, involvement of lorry bearing No.AP 23T 8833 in which the claimant travelled and involvement of the opposite lorry bearing No.AP 27U 7974 and injuries to the claimant are not in dispute. As per claimant, immediately after accident he was taken to Government Head Quarters Hospital, Khammam on 19.07.2007. As he suffered sub-trochanteric fracture of left femur which needed surgery and which facility was not available in the Government Hospital and hence on 21.07.2007 he was admitted in a private hospital viz. Siva Orthopedic Hospital, Khammam where PW3 performed surgery to him by fixing interlocking nailing to his fractured left femur. His further case is that fracture at left femur was not united and got infected and so he was admitted in Sai Sanjeevini Hospital, Hyderabad where PW3—Dr.S.Anjaiah conducted operation. As per the version of claimant, he suffered disability to his left leg. In proof of his treatment, he examined PWs.2 and 3. Since PW3 is the doctor who initially treated the claimant, his evidence has to be perused.

a) PW3—Dr. N.Sunil Kumar deposed that claimant was admitted in his hospital viz. Siva Orthopedic Hospital, Khammam on 21.07.2007 with sub-trochanteric fracture of

left femur and on 22.07.2007 he conducted surgery by inter-nailing to the fractured left femur and discharged patient on 09.08.2007.

b) Then, PW2—Dr.S.Anjaiah of Sai Sanjeevini Hospital, Hyderabad deposed that the claimant was admitted in his hospital on 02.09.2008 with the problem of infection and non-union and nail proximal migration of left femur for which he performed nail extraction and exchange recon nail left femur and bone grafting. This witness further stated that claimant suffered 50% permanent partial disability and thereby claimant is not fit to drive any vehicle. He denied the suggestion in the cross-examination that claimant has not suffered any disability.

c) Then, Ex.A5 is the discharge summary issued by PW3. The lower Tribunal has not accepted the evidence of PWs.2 and 3 particularly, PW2 with regard to disability spoken by him mainly on the ground that no disability certificate, probably issued by Medical Board, was produced by the claimant. I am afraid this approach of the Tribunal is not correct.

d) It may be noted that in ***Raj Kumar vs. Ajay Kumar***^[1] the Apex Court has given clear guidelines as to how to appreciate medical evidence in determining the disability of a victim in a motor accident case. Incidentally, the Apex Court also discussed about the authenticity of the disability certified by a competent doctor who treated or who on clinical examination certified the disability. The

Apex Court summarized its principles as follows:

“Para 19: We may now summarise the principles discussed above:

- (i) xx xx*
- (ii) xx xx*
- (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.”*

Thus a perusal of above principles would show that either a qualified doctor who treated the victim or another competent doctor who clinically examined the victim are authorized to depose about the disability suffered by the victim. In such instances, the Courts need not discard the disability certified by them on the mere ground that the victim has not produced disability certificate issued by the Medical Boards. Ofcourse, concerned Doctor who speaks about the disability of the victim should be examined before the Court of law as an expert witness to enable the opposite party to challenge the veracity of his evidence and also the Court to assess the probative value of his evidence.

e) Coming to the instant case, as already stated, the Tribunal rejected the evidence of PW2 mainly on the ground that disability certificate was not produced. This approach of the Tribunal is against the guidelines given by the Apex Court. PWs.2 and 3 are competent doctors

and moreover they have treated the claimant at different stages. Their qualification was not doubted by the respondents and no suggestion was put to them in that regard. The claimant suffered sub-trochanteric fracture of left femur and due to mal-union he suffered disability. Hence, there is nothing to doubt about the evidence of PWs.2 and 3 and therefore, claimant deserves compensation for the disability.

9) The Tribunal though discarded the evidence of PW2 with regard to disability however, curiously awarded a lumpsum compensation of Rs.40,000/- for permanent partial disability. The compensation has to be awarded by adopting multiplier method. The disability spoken by PW2 is a physical disability. The Court has to fix the functional disability basing on his avocation to assess the loss of earning capacity. According to PW2, the claimant is not fit to drive any vehicle. So, he may not be fit for driving the vehicle and he has to search for other job only. In that view of the matter and as it is not a case of amputation of any limb incapacitating the claimant totally to do any job, his functional disability is fixed at **25%**.

a) Having regard to his profession, his monthly income is fixed at Rs.2,500/- and a sum of Rs.500/- is added as future prospects. Thus, his gross annual income comes to Rs.36,000/- (Rs.3,000/- x 12). Having regard to his age as 45 years, '13' is accepted as multiplier. Thus, the

compensation for future earnings comes to Rs.1,17,000/-
(Rs.36,000/- x 13 x 25%).

So, the total compensation payable to the claimant
under different heads is detailed as below:

Pain and suffering	Rs. 10,000-00
Pecuniary damages	Rs. 30,000-00
Loss of earning power due to disability	Rs.1,17,000-00

- Total	Rs. 1,57,000-00

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So, the compensation is enhanced by Rs.77,000/-
(Rs.1,57,000/- minus Rs.80,000/-).

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

- a) The compensation is enhanced by Rs.77,000/-
with interest at the rate of 7.5% p.a from the date
of O.P till the date of realization.
- b) The respondents 1 to 3 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.
- c) No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 02.11.2015

Murthy

[\[1\]](#) (2011) 1 SCC 343 = (2011) 1 SCC (Cri) 1161