HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.878 of 2010

JUDGMENT:

Aggrieved by the Award dated 11.01.2010 in O.P.No.1615 of 2008 passed by the Chairman, M.A.C.T-cum-IV Addl. Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a. On the night of 30-12-2007 the claimant was proceeding on his motor cycle bearing No. AP 09 BG 8284 from Erragadda to St.Thereasa Church and at about 10.30 pm when he reached near St. Therasa Hospital of Erragadda, a Maruthi Swift Car bearing No.AP 13 J 9729 being driven by its driver in a rash and negligent manner at high speed and dashed behind the motor cycle. In the resultant accident, the claimant received multiple injuries all over the body. Thereafter, he was shifted to St. Theresa Hospital and from there to NIMS Hospital, Hyderabad. It is averred that the accident was occurred due to the rash and negligent driving of the driver of crime vehicle. On these pleas, the claimant filed O.P.No.1615 of 2008 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 car and claimed Rs.10,00,000/- as compensation.

b. R1 filed counter denying petition mentioned material allegations contending that vehicle being insured with R2/Insurance Company it is liable to pay compensation.

c. R2/ICICI Lambord General insurance Company Limited filed counter opposing the claim contending that it is not insurer for the car bearing No.AP 13 J 9729. It denied the involvement of car in the accident and fault of its driver. It also contended that car driver was not holding valid driving licence and owner knowingly entrusted the vehicle to him. Finally, it denied the injuries treatment and medical expenditure said to be incurred by the claimant and urged to put him strict proof and prayed for dismissal of OP.

d. During trial, PWs.1 to 3 were examined and Exs.A1 to A15 and EXs. X.1 to X.3 were marked on behalf of claimant. No oral or documentary evidence was adduced on behalf of respondents.

e. The Tribunal, on appreciation of both oral and documentary evidence, had awarded Rs.3,28,800/- as compensation against respondents with proportionate costs and interest @ 7.5% p.a. under different heads as below:

Pain and suffering Rs. 20,000-00

Medicines and extra

nourishment Rs. 35,000-00

Loss of earnings due to

Disability at 15% Rs. 2,44,800-00

Transport charges Rs. 5,000-00

Loss of past earnings Rs. 24,000-00

Total Rs. 3,28,800-00

Hence, the appeal by claimant.

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

4) Heard arguments of Sri K. Hari Mohan Reddy, learned counsel for appellant/claimant and Sri N. Mohan Krishna, learned counsel for respondent No.2. Though Notice on R.1/owner of the Car was served, but there is no appearance on his behalf and hence treated as heard.

5) Challenging the award learned counsel for appellant/claimant mainly argued that claimant suffered 30% disability due to amputation of left great toe and degloving injury to left foot but the Tribunal erroneously accepted the disability only as 15%. He further argued that the Tribunal erred in accepting salary of the claimant as Rs.8,000/- though he in fact was earning Rs.12,000/-pm as deposed by PW3 who is the employer of claimant. The Tribunal committed further error in not adding future prospects to his salary. Due to all these errors, he submitted, the compensation was drastically reduced. He thus prayed to enhance the compensation suitably. He relied upon several decisions on the aspect of the necessity to take into consideration the future prospects.

6) Per contra, learned counsel for respondent No.2/Insurance Company submitted that compensation awarded under different heads is just and reasonable and there is no need to revise the same and prayed for dismissal of the appeal.

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

"Whether the compensation awarded by the Tribunal is just and adequate or needs interference?"

8a) **POINT**: The accident, involvement of car bearing No. AP 13 J 9729 and injuries to the claimant are not in dispute. A perusal of Ex.A4—Medico Legal Card issued by NIMS, Ex.A7—disability certificate coupled with the evidence of PW2 would show that claimant suffered crush injury to his left foot resulting in amputation to left great toe and degloving injury on the dorsum to left foot causing deformity. Further, the mal-united fracture in the left foot caused him 30% disability. It is stated that due to disability to the left foot the claimant cannot stand and walk for long periods. This is the evidence with regard to nature of injuries and consequent disability suffered by the claimant. The lower Tribunal accepted his disability at 15% and accordingly computed compensation which is being impugned in this appeal.

b) The first argument of the appellant is that the Tribunal should have accepted the entire 30% disability for computation of compensation. On a close scrutiny of evidence on record, I am unable to accept this argument. It should be noted that in each and every case, the extent of physical disability suffered by a victim may not result in equal extent of loss of earning power. Precisely, some times, the extent of physical disability and extent of functional disability may vary depending upon the fact as to what extent the disability adversely affected on the avocation of the victim. This was so held by the Apex Court in the case of ***Raj Kumar v. Ajay Kumar***. The Apex Court observed where the claimant suffered permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Apex Court cautioned, the Tribunals should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity because in most of the cases the percentage of economic loss will be different from the percentage of permanent disability. It is noticed that some Tribunals wrongly assume that in all cases a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity.

c) Cautioning as above, the Apex Court has given guidelines for computation of compensation for loss of earning power due to disability. It observed that such computation involves three stages. The Tribunal should first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability. The second step is to ascertain his avocation, profession and nature of work before the accident as also his age. The third step is to find out whether the claimant is totally disabled from earning any kind of livelihood or whether in spite of the permanent disability the claimant could still effectively carry on the activities and functions which he was earlier carrying on or whether he was prevented or restricted from discharging his previous activities and functions but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

d) So, applying the above guidelines we have to see what is the percentage of functional disability. As per Ex.A8 and the evidence of PW3, prior to the accident the claimant worked as Field Demo Engineer in the authorized service center of Samsung Electronics Private Limited, Hyderabad. PW3 who is the Manager of Anis Electronics runs the said service center. Ex.A9 would show that PW3 terminated the services of PW1/claimant as he is not recovered from the injuries even after two months and as they have a lot of pending work in their shop. Be that it may, as per Ex.A7 due to adverse effect of 30% disability he cannot stand or walk long periods. So it is not his case that the claimant is totally unfit to do any gainful job. The only problem is he cannot stand or walk for long periods. He is B.Tech. Engineering graduate. Taking the nature of his qualification, his past employment and his future ability to do jobs in I.T. field, it cannot be said that his functional disability is also equivalent to 30% physical disability. Therefore, the Tribunal was right in accepting his functional disability only at 15%. Basing on it, the compensation for loss of future earnings has to be assessed.

9) The second contention of learned counsel for appellant is that though claimant was earning consolidated pay of Rs.12,000/- per month as is evident from Ex.A8—salary certificate and Ex.X2—salary vouchers the Tribunal accepted only Rs.8,000/- and further it has not added the future prospects to the salary. This argument is only partly correct. Salary is concerned, no doubt we find from the oral evidence of PW3, Ex.A8 and Ex.X2 as if the claimant was paying Rs.12,000/- as consolidated pay. Ex.X2 which purported to be the vouchers

obtained from claimant after making monthly payment. PW3 failed to produce the account books and acquittance register in support of vouchers. Therefore, the documents produced by the claimant cannot be accepted on their face value. Going by the nature of his job the Tribunal rightly fixed his monthly earnings as Rs.8,000/- However, it failed to add the future prospects to the salary.

10) The Apex Court in the case of ***V.Mekala v. M.Malathi*** cited by the appellant, basing on its earlier decision in ***Santosh Devi v. National Insurance Company Limited*** added 50% to the salary of the employee towards future prospects. Going by the same, a sum of Rs.4,000/- is added to the salary of the claimant towards future prospects to make it Rs.12,000/-. So, the compensation for loss of future earnings comes to Rs.**3,67,200/-** (12,000 x 12 x 17 x 15%).

11) It was also argued the claimant is entitled to loss of basic amenities as if he lost marriage prospects due to disability. The said contention is rejected for the reason that the disability suffered by him due to amputation of his great toe and deformity in the left foot will not render him unfit for marriage and also that the claimant has not placed the evidence that any marriage alliance was cancelled due to his disability. Thus, the total compensation payable to the claimant under different heads is as follows:

Pain and suffering Rs. 20,000-00

Medicines and extra

nourishment Rs. 35,000-00

Loss of earnings

due to 15% disability Rs. 3,67,200-00

Transport charges Rs. 5,000-00

Loss of past earnings Rs. 24,000-00

Total Rs. 4,51,200-00

Thus, the compensation is enhanced by Rs.**1,22,400/-** (4,51,200/- minus Rs.3,28,800/-)

12) In the result, this MACMA is partly allowed and ordered as follows:

a. Compensation is enhanced by **Rs.1,22,400/-** with proportionate costs and interest at 7.5% per annum from the date of O.P till the date of realization.

b. Respondents in the OP shall 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: 27.11.2015

Murthy