

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2636 of 2009

JUDGMENT:

Challenging the Award, dated 20.03.2009 in M.V. O.P.No.611 of 2004 passed by the Chairman M.A.C.T.-cum-VI Additional District Judge (Fast Track Court), Rajahmundry, East Godavari District, the claimant preferred the instant appeal.

2. The factual matrix of the case is thus:

(a) The case of the claimant is that he is doing Dhobi work and on 26-11-2003, while he was proceeding on a cycle by carrying cloth bundle from Ramachandrapuram to his native place A.Agraharam on the left side of the road and when he reached near Venkateswara Cement Works in Chodavaram at about 7.30 P.M., the 1st respondent drove his Yamaha Motor Cycle bearing No.AP-5AD-7119 in a rash and negligent manner and dashed claimant in opposite side. Thereby claimant sustained severe injuries to both his legs and skin was peeled off exposing the bone and grievous injuries to mouth resulting the fracture of mandible and loss of right incisor teeth in the lower jaw and loosening of the entire teeth and grievous injury near the chin and multiple injuries all over the body. It is averred that R1 was liable for accident. On these pleas, the claimant filed O.P.No.611 of 2004 under Section 156 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2, who are the owner and insurer of the crime vehicle and claimed Rs.1,75,000/- as compensation.

b) Respondent No.1/owner of the vehicle remained *ex-parte*.

c) Respondent No.2—Insurer opposed the petition contending R1 was not having valid and effective driving licence, the compensation claimed is excessive and prayed to dismiss the O.P.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A5 and Exs.X1 to X3 were marked on behalf of claimant. Policy copy produced by R.2 was marked as Ex.B.1 on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.70,500/- with proportionate costs and interest at 7.5% p.a. against respondent Nos.1 and 2.

Hence, the appeal.

3. Appellant herein is the claimant, whereas the respondents herein are the respondents before the Tribunal. For better appreciation of facts, the parties hereinafter will be referred to as they were arrayed before the Tribunal.

4. Heard both sides.

5 (a) Learned counsel appearing for the appellant/claimant argued that compensation awarded is grossly low and inadequate. He firstly submitted that the Tribunal awarded low amount for 20% disability suffered by the claimant and it ought to have taken into consideration the earning of the claimant as at least Rs.2,000/- per month and the multiplier as 18 for computation of compensation for disability.

(b) *Secondly*, he argued that as the claimant suffered fracture of mandible and loosening of some teeth and also loss of some teeth, the Tribunal ought to have granted at least 25% of the earnings since all of them are grievous injuries.

(c) Learned counsel for the claimant further argued that having regard to the fact that the claimant suffered disfigurement of the face, which affected his marital prospects, the Tribunal ought to have awarded compensation in that regard also. Thus, he prayed to allow the appeal and enhance the compensation suitably.

6. Per contra, while supporting the Award, learned counsel for 2nd respondent/Insurance Company submitted that the compensation awarded under different heads is just and reasonable and there is no need to interfere with the same.

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 reasonable or needs interference?”

8. **POINT:** The accident, involvement of Yamaha Motor Cycle bearing No.AP-5AD-7119 and injuries to the claimant are not in dispute. The bone of contention is quantum of compensation. Injuries are concerned, the evidence of P.W.2 shows that he examined the claimant and found the following injuries:

1. A laceration present in the right leg in the middle 4 inches x 3 inches red in colour

2. Two lacerations present at left leg 1 inch x 1 inch red in colour and 3 x 3 inches bleeding present.

3. Laceration present at the chin 1 inch x 1 inch bleeding present.

4. Loss of right incisor 2nd of the lower jaw.

5. Loosening of the front teeth of the lower jaw present.

6. Swelling present at the chin.

He stated that injuries 3,4 and 6 are grievous in nature. Regarding effect of injuries, he deposed that he found deviation of jaw bone fragments, mal occlusion of teeth with displacement of jaw fragments. He further stated that due to this, the patient is not able to swallow properly and face difficulty in mastication and deglutition. He further stated that X ray revealed fracture of mandible bone, forcible loosening of teeth and loss of lower right incisor. He stated that for the aforesaid injuries, the claimant was treated by dental Operation. He assessed the disability at 20% and stated that the patient's normal functioning of oral cavity is disturbed and the mal union cannot be restored. The above is nature of injuries, disability suffered by the claimant. It must be noted that the doctor has not stated anything with regard to loss of earning capacity due to aforesaid disability. He only deposed about the physical disability and associated problems i.e., problem of mastication and deglutition etc.,

9. Be that it may the compensation is concerned, the Tribunal by taking the notional income of the claimant as Rs.15,000/- per annum and multiplier 17 (Rs.15,000/-X17X 20%) awarded Rs.51,000/- towards loss of income due to permanent disability. Since the doctor did not depose about the possible loss of earning capacity due to disability, the claimant may not be entitled to compensation for loss of earning power due to disability since there is no such loss of earning power. However, on the other hand, the claimant would be entitled to compensation for physical disability, which results in loss of basic amenities. Therefore, the compensation, which was awarded supra shall be treated as one for physical disability and loss of basic amenities. So far as sufficiency of compensation is concerned, the claimant is a young person and having lot of future and he is unmarried. To some extent, his marriage prospectus were adversely affected. Further he is constantly facing difficulty in mastication and deglutition, which will affect his health also. Considering it, the compensation of Rs.51,000/- is enhanced to Rs.75,000/- under this head. The compensation for other heads are concerned, I see no irregularity or illegality. Therefore, the compensation payable under different heads is stated as follows:

Physical disability and loss of

amenities Rs.75,000/-

Pain and sufferance due to
grievous injuries Rs.10,000/-

Pain and sufferance due to
simple injuries Rs.4,500/-

Medical Expenses Rs.5,000/-

Total Rs.94,500/-

So, at the outset, the compensation is enhanced by **Rs.24,000/-**
(Rs.94,500/- minus Rs,.70,500/-)

10. In the result, this appeal is partly allowed and ordered as follows:

- a. Compensation is enhanced by **Rs.24,000/-** with proportionate costs and interest at 7.5% per annum from the date of O.P till the date of realization against the respondents 1 and 2.
- b. Respondents 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

DATED: 28.08.2015

Hsd

