

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ M.A.C.M.A No.3989 of 2009

%09.02.2015

Between:

The National Insurance Company Limited,
Rep. by its Regional Manager
Secunderabad. Appellant

AND

Alapati Umalatha
and others. Respondents

! Counsel for Appellant : Sri R.K. Suri

^ Counsel for Respondent No.1 : Sri K. Ramesh Babu

< Gist:

> Head Note:

? Cases referred:

- 1) 2001 (6) ALD 790 (DB)
- 2) 2011 ACJ 1 (SC)

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3989 of 2009

JUDGMENT:

Aggrieved by the Award dated 03.10.2006 in O.P.No.152 of 2006 passed by the Chairman, M.A.C.T-cum-District Judge, West Godavari, Eluru (for short "the Tribunal"), the 3rd respondent in the O.P./National Insurance Company Limited preferred the instant MACMA.

2 a) On factual side, on 09.06.2005 at about 11:00am, when the claimant along with her mother and daughter was proceeding in rickshaw and reached near Kakani Kalyana Mandapam at Hanuman junction, one lorry bearing No.AP 07 W 5189 being driven by its driver in a rash and negligent manner, dashed the rickshaw behind and thereby the claimant sustained grievous injuries. It is averred that the accident was occurred due to the fault of driver of the offending lorry. On these averments, the claimant filed O.P.No.152 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "MV Act") against respondents 1 to 3, who are driver, owner and insurer of the offending lorry and claimed Rs.10,00,000/- as compensation under different heads mentioned in the O.P.

b) Respondent Nos.1 and 2 remained *ex parte*.

c) Respondent No.3/Insurance Company filed counter denying all the material averments made in the petition and urged to put the claimant in strict proof of the same. R.3 further denied the age, income, medical expenditure and treatment underwent by the petitioner. Finally R.3 contended that the compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 5 were examined and Exs.A1 to A15 were marked on behalf of claimant. Policy copy filed by 3rd respondent was marked as Ex.B.1.

e) The Tribunal on appreciation of both oral and documentary evidence on record, has awarded total compensation of Rs.9,17,784/- with costs and interest at 7.5% p.a under different heads as follows:

Medical expenditure	Rs. 16,483-00
For 3 grievous injuries	Rs. 45,000-00
For 5 simple injuries	Rs. 25,000-00
Pain and suffering	Rs. 10,000-00
Loss of income	Rs.8,21,301-00

Total	Rs.9,17,784-00

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Sri R.K.Suri, learned counsel for appellant/ Insurance Company and Sri K. Ramesh Babu, learned counsel for respondent No.1/claimant. Notice sent to respondents 2 and 3 was returned unserved.

5) Learned counsel for appellant/Insurance Company challenged the award on the main ground that the Tribunal grossly erred in awarding Rs.8,21,301/- as compensation for loss of income in spite of the fact that even after the accident the claimant continues in the same job and drawing the same salary as before which is evident from the deposition of PWs.1 and 3. In further expatiation, he submitted that disability of 50% in both legs of the claimant as deposed by the doctors is only a

physical disability with reference to whole body and the Tribunal having regard to the nature of employment, age and other factors should determine the functional disability which adversely affect the earning capacity of the claimant and then only determine the compensation for loss of income. If that is so, he argued, in the instant case despite the fact that claimant suffered certain percentage of physical disability, she did not suffer function wise any disability because as stated earlier, she continues in same job and gets same salary. So, functional disability can be said to be cipher. As such she does not deserve compensation for alleged loss of earning capacity. He thus prayed to allow the appeal and re-assess the compensation.

6) Per contra, while supporting the award learned counsel for respondent/claimant submitted that the claimant suffered 50% of physical disability which affected her future earning capacity and hence, though she is now continuing in the same job and getting same salary, taking her loss of future earning capacity, the Tribunal awarded compensation which is just and reasonable by all means and therefore, there are no merits in the appeal. He relied upon the decision of this Court reported in ***APSRTC, MD, Mushirabad, Hyderabad vs. S.Dhanamjaya Reddy***^[1]. He thus prayed to dismiss the appeal.

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

“Whether the Tribunal was right in awarding compensation for loss of earning power due to disability though there is no present loss?”

8) **POINT:** This point is concerned, the evidence of PW4—Dr. Shah J.M, Consultant Orthopedic Surgeon, Seven Hills, Visakhapatnam would show that the claimant suffered (1) Fracture Tibia Fibula (left), (2) Fracture Medial Condyle Tibia (Right) and (3) Fracture Lateral Mellelous (Right) for which she was treated in the said hospital. He further deposed that due to injuries she has been facing difficulty in walking, sitting on the floor and squatting. Then, PW2 who is the Civil Assistant Surgeon, Government Hospital, Eluru and member of Medical Board deposed that he examined PW1 and issued Ex.A8—disability certificate, as per which, due to malunion of fracture of both bones of left leg and due to stiffness of right knee joint, he certified 50% disability. This is the evidence touching injuries and disability.

a) As per the evidence of PW1, prior to accident she was 42 years old and working as Chief Draftsman (re-designated as Additional Assistant Director (Arch.)) of Chief Engineer (Navy) at Visakhapatnam and was getting Rs.16,990/- per month. Her version is that she is an efficient and skilled employee in her department and due to accident her physical stamina and ability were decreased and now she is not in a position to work hard as before as she was deprived promotion. She further stated due to accident she lost two increments and had the

accident not occurred, she would have reached the post of Technical Officer, Grade-I and earned salary of Rs.30,000/- p.m. and due to above accident her total career was damaged. She further stated that besides loss of promotions and earnings, she also suffered physical disability and personal inconvenience and permanent disfiguration.

b) So, from the above evidence, it is clear that petitioner due to injuries to both legs suffered 50% of permanent disability and thereby she suffered loss of two increments and promotional chances though she continued in the same job. Besides she suffered physical disability and associated loss of basic amenities. The award shows the Tribunal taking her 50% disability, her net salary of Rs.11,780/- and her age as 42 years, fixed compensation for loss of earnings at Rs.8,21,301.60-00 (Rs.11,780 x 12 x 11.62 x 50%). The said compensation is now assailed on the main contention that the claimant has not suffered any present monetary loss due to physical disability. Hence the point is whether the Tribunal was right.

c) The law is no more *res integra* on this aspect. The Honourable Apex Court in the decision reported in ***Raj Kumar vs. Ajay Kumar***^[2] dealt with this aspect. The Apex Court observed thus:

“Para 10: x x x x

For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a

carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. (Emphasis supplied). It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation.”

9 a) So, the guiding principle in the above decision is that in case of an employee, if the physical disability did not result in loss of job or diminution of salary, he will not be entitled to compensation for loss of earning power but only under the head loss of amenities. On the other hand, though he is continued in job but suffered monetary loss due to change

into a lesser post with lesser emoluments he will be entitled to compensation for loss of future earning capacity to the extent of reduced earning capacity. Besides, he will be entitled to a reasonable amount for loss of amenities provided the percentage of earning capacity is not treated as more than 50% for awarding compensation for loss of earning capacity.

b) Similar view was expressed by a Division Bench of this Court in ***Dhananjaya Reddy***'s case (1 supra) also. The Division Bench observed that though the claimant was retained in the job with same salary, still he would be entitled to compensation for loss of earning capacity due to uncertainty of his future promotional prospects. Taking that fact the Division Bench deducted 1/4th from the compensation awarded by the Tribunal for loss of earning capacity and retained the remaining amount.

10) When the guidelines in the above decisions are applied to the facts of the present case, we cannot approve the Tribunal's awarding full compensation for loss of earning capacity as the calculation shows the Tribunal went on a wrong premise as if the claimant lost her job and took her entire salary for computation of compensation. As laid down by the Apex Court she deserves compensation to the extent of monetary loss caused by depriving the promotion due to her disability. Hence, compensation needs to be reassessed in this regard.

a) As per PW1 had there been no accident she would have

been promoted as Technical Officer, Grade-I and earn salary of Rs.30,000/- instead of present salary of Rs.16,990/-. Thus, she claims monetary loss of Rs.13,000/- per month. Except her self-serving statement she has not produced any cogent material from her office to establish this fact. Surprisingly, PW3 who is the SO (Administration) in her office also did not say anything about her loss of promotion and consequent monetary loss etc. So for want of proper evidence the monetary loss cannot be accepted as Rs.13,000/- though it is accepted that disability affected her promotional chances. Therefore, taking nature of her employment and promotional chances into consideration, the monetary loss is fixed at Rs.7,000/- per month. Thus, loss of future earning capacity due to disability comes to Rs.4,88,040/- ($\text{Rs.7,000} \times 12 \times 11.61 \times 50\%$).

b) Added to the above, the claimant deserves compensation for loss of basic amenities also since disability in this case did not exceed 50% for computing loss of earning power. Having regard to the fact that due to disability she has to forego certain basic amenities like sitting on the floor, squatting and facing difficulty in walking etc. she is awarded Rs.50,000/-.

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

Medical expenditure	Rs. 16,483-00
For 3 grievous injuries	Rs. 45,000-00
For 5 simple injuries	Rs. 25,000-00
Pain and suffering	Rs. 10,000-00
Loss of future income	

Due to disability	Rs.4, 88,040-00
Loss of basic amenities	Rs. 50,000-00

Total Rs.6,34,523-00

So, the compensation is reduced by Rs.2,83,261/-
(Rs.9,17,784/- minus Rs.6,34,523/-).

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

- i) The compensation amount awarded by the Tribunal is reduced by Rs.2,83,261/-.
- ii) The Respondents are directed to deposit the compensation amount with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization within two months from the date of this judgment, failing which execution can be taken out against them.

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

U.DURGA PRASAD RAO, J

Date: 09.02.2015

Note: L.R. copy to be marked: Yes/No

Murthy

[\[1\]](#) 2001 (6) ALD 790 (DB)

[\[2\]](#) 2011 ACJ 1 (SC)