

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3706 of 2009

JUDGMENT:

Aggrieved by the Award dated 19.09.2008 in O.P.No.759 of 2006 passed by the Chairman, M.A.C.T-cum-XXII Additional Chief Judge, City Criminal Court at Hyderabad (for short "Tribunal"), the claimant preferred the instant MACMA.

2) On factual side, on 11.10.2005 at about 2.20 PM, when the petitioner was proceeding as pillion rider on a motorcycle bearing No.AP 29H 1696 towards Hyderabad and when they reached Koyalagudem, the rider of the motorcycle drove the vehicle in a rash and negligent manner and at high speed and dashed the opposite coming scooter bearing No.AP 28R 2812. Due to which, the petitioner and rider of motorcycle fell down on the road and sustained injuries. It is averred that the accident was occurred due to the rash and negligent driving of the motorcyclist. On these pleas, the claimant filed O.P.No.759 of 2006 under Section 163A of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2, who are the owner and insurer of the motorcycle and claimed Rs.1,50,000/- as compensation.

b) R1 remained *ex-parte*.

c) R2/Insurance Company filed counter and opposed the claim denying all the material averments made in the petition. R2 denied the age, avocation and income of the petitioner. R2

contended that there is no negligence on the part of rider of the vehicle and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A13 were marked on behalf of claimant. Ex.B1—copy of insurance policy was marked on behalf of R2.

e) The Tribunal on appreciation of oral and documentary evidence has awarded a sum of Rs.82,905/- with costs and interest at 9% p.a under different heads as follows:

Pain and suffering	Rs. 40,000-00
Medical expenditure	Rs. 22,905-00
Loss of earnings	Rs. 5,000-00
Extra-nourishment	Rs. 5,000-00
Future medical expenses	Rs. 10,000-00

Total	Rs.82,905-00

Hence the appeal by claimants.

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

4) Heard arguments of Smt. B.Roja Ramani, learned counsel for appellant/claimant and Sri R.Venkat Rao, learned counsel for R2/ Insurance Company. Though notice to R1/owner of the motorcycle was served but there is no representation on his behalf, hence treated as heard.

5) Learned counsel for appellant challenged the award mainly on the ground that the claimant suffered 15% of permanent disability in his right leg in the resultant accident

which effected his vegetable vending business but despite the same the Tribunal granted only a pittance of Rs.5,000/- towards loss of future income without assessing the compensation under multiplier system and thereby compensation was drastically reduced. He argued that under similar circumstances when a vegetable vendor lost his right leg in an accident, Hon'ble Apex Court in a decision reported in ***Syed Sadiq and others vs. Divisional Manager, United India Insurance Co. Ltd***^[1] computed the compensation under multiplier system. Learned counsel thus prayed to reassess the compensation by allowing the appeal.

6) Per contra, learned counsel for 2nd respondent/ Insurance Company while supporting the award submitted that though the claimant suffered 15% disability, it did not adversely effect his vegetable vending business as he has been attending his business by sitting in the shop and vending the vegetables and in that context, the amount of Rs.5,000/- awarded by the Tribunal was just and reasonable and there is no need to revise 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 the motorcycle bearing No.AP 29 H 1696 and scooter bearing No.AP 28 R

2812, the claimant suffering injuries are all admitted facts. So far as the disability is concerned, the evidence of PW.2 coupled with Ex.A.5—discharge summary and Ex.A.11—disability certificate would show that in the resultant accident the claimant suffered: 1) compound bimalleolar fracture right ankle 2) Lacerated wound on the medial aspect of right ankle joint with distal tibia protruding out. For these injuries he was treated by PW.2—Orthopedic Surgeon in Kamineni Hospital, Hyderabad. PW.2 deposed that he took up PW.1 for surgery ORIF ankle (fibular plating and malleolar screw fixation for MM) under general anesthesia. Further, slab was applied below knee. He was discharged on 14.10.2005. PW.2 stated that operative finding showed fracture of lower third of fibula with fracture Medial Malleolus resulted in disruption of tibia fibula syndesmosis and soft tissue injury. PW.2 further deposed that all the injuries suffered by PW.1 are grievous in nature and he underwent a major surgery. Further, PW.1 requires one more surgery for removal of implants, which would cost about Rs.20,000/-.

a) Then with regard to the disability, PW.2 deposed that he found swelling of right ankle and restriction of movements of right ankle and thereby he assessed the disability of the claimant at 15% partial permanent following Mac Bride scale and issued Ex.A.11—disability certificate. It should be noted that except suggesting that the claimant has not suffered 15% disability and PW.2 was deposing falsehood to help PW.1, nothing specific could be extracted to hold that PW.2 was

deposing falsehood. PW.2 is a qualified Orthopedic Surgeon who treated and assessed the disability of PW.1 upon clinical examination and therefore, there is no need to discard his evidence.

b) Thus having regard to disability of PW.1, the claimant deserves compensation for loss of future earnings. The Tribunal awarded a lump-sum amount of Rs.5,000/- without assessing the same by adopting multiplier system. It should be noted that it is a well known principle that compensation for disability shall be assessed by multiplier system having regard to the extent of functional disability, avocation of the injured and the adverse impact the disability had on his earning capacity. In ***Syed Sadiq's*** case

(1 supra) cited by appellant, Hon'ble Apex Court assessed the compensation by adopting multiplier system. So compensation needs to be reassessed.

c) 15% of disability certified by PW.2 is a physical disability. We need to assess the functional disability basing on the adverse impact of the physical disability on the earning capacity of the claimant. The claimant is said to be a vegetable vendor. In Ex.A.1—FIR which was the earliest document generated after accident, he mentioned his avocation as vegetable business. Besides, he produced Ex.A.12—certificate issued by Panchayat Secretary of Choutuppall Gram Panchayat showing that the claimant was doing vegetable business in the Gram Panchayat market. The claimant suffered disability in his right lower leg

and as per PW.2, the movements of right ankle were restricted. Due to this, naturally the claimant cannot move swiftly in the course of attending his vegetable business. He has to carry vegetables baskets and place them in his shop and attend his business. Certainly the disability will have an adverse impact on his earning capacity. Considering it, the functional disability is fixed at 10%.

d) Then earnings of the claimant are concerned, having regard to his vegetable business, his monthly income is fixed at Rs.2,000/- by the date of accident. To this a sum of Rs.500/- is added towards future prospects. So total monthly earnings of the claimant comes to Rs.2,500/-. The claimant was aged about 27 years by the time of accident. Hence '15' is taken as multiplier. Thus the compensation works out to Rs.45,000/- (Rs.2,500/- x 12 x 15 x 10%). So the total compensation payable to the claimant under different heads is detailed as below:

Pain and suffering	Rs. 40,000-00
Medical expenditure	Rs. 22,905-00
Loss of earnings	Rs. 45,000-00
Extra-nourishment	Rs. 5,000-00
Future medical expenses	Rs. 10,000-00

Total	Rs.1,22,905-00

So, the compensation is enhanced by Rs.40,000/- (Rs.1,22,905 minus Rs.82,905).

9) In the result, this MACMA is partly allowed and ordered as

follows:

- a) Compensation is enhanced by Rs.40,000/- with proportionate costs. The enhanced compensation amount shall carry interest @ 7.5% per annum from the date of OP till the date of realization.
- b) Respondents are directed to deposit the compensation amount within one month 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: 06.02.2015

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

scs

[\[1\]](#) 2014 ACJ 627 (SC)