

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.3588 of 2009

JUDGMENT:

Challenging the compensation awarded in M.A.T.O.P.No.218 of 2001 dt:17.03.2005 by the Chairman, M.A.C.T-cum-III Addl. District Judge(FTC), Khammam (for short "the Tribunal"), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 11.04.1999 at about 7.00AM the claimant along with others boarded a tanker bearing No.AP 5 X 2401 to go to Janga Reddygudem to purchase the fruits in Janagareddygudem market and when they reached near a culvert in the outskirts of Kistaram village, the driver of lorry bearing No. ADT 4118 drove the vehicle at high speed and in a rash and negligent manner and dashed against tanker. In the resultant accident, the claimant sustained grievous injuries. It is averred that the accident was occurred due to the rash and negligent driving by the driver of lorry. On these averments, the claimant filed M.V.O.P.No.218 of 2001 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos.1 to 3, who are driver, owner and insurer of lorry bearing No.ADT 4118 and respondents 4 and 5, who are owner and insurer of tanker lorry bearing No.AP 5 X 2401 and claimed Rs.1,00,000/- as compensation under different heads mentioned in OP.

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b) Respondent No.1, 2 and 4 remained *ex parte*.

c) Respondent No.3/United India Insurance Company Limited filed counter and denied all the material averments made in the petition and urged to put the claimant in strict proof of the same. It is averred that the accident was occurred due to rash and negligent driving by the driver of lorry bearing No. AP 5 X 2401. R3 finally contended that

compensation claimed is excessive and exorbitant and prayed for dismissal.

d) Respondent No.5/Oriental Insurance Company Limited filed counter and denied all the material averments made in the petition and urged to put the claimant in strict proof of the same. It is averred that the accident was occurred due to rash and negligent driving by the driver of tanker bearing No. ADT 4118. R5 finally contended that compensation claimed is excessive and exorbitant and prayed for dismissal.

e) During trial, on behalf of claimant, PW.1 to 4 were examined and Exs.A1 to A32 were marked. On behalf of respondents, Exs. B.1 to B.3 were marked.

f) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.54,634/- with costs and interest at 9% p.a under different heads.

Hence, the appeal by the claimant.

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

4) Heard arguments of Sri M. Rajamalla Reddy, learned counsel for appellant/claimant and Sri Bathula Raj Kiran, learned counsel for respondent No.5/Insurance Company. Though Sri S.Venkateshwarlu, learned counsel filed Vakalat on behalf of respondent No.3/Insurance Company but there is no representation on its behalf. Notice sent to R1/owner was not yet returned. Though notices sent to R.2 and R.4 were served, there is no representation on their behalf, hence treated as heard.

5 a) Challenging the Award, learned counsel for appellant mainly argued that the Tribunal has not awarded compensation for simple injuries suffered by the claimant. Apart from two grievous injuries, he also suffered three simple injuries and so he deserves compensation for simple injuries.

b) Next, learned counsel argued that the claimant has to undergo further surgery for removal of the plate implanted in his body and the Tribunal has not granted any amount in that regard. He, thus, prayed that the appeal may be allowed and the compensation may be reassessed.

6) Per contra, learned counsel for respondent No.5/Oriental Insurance Company argued that compensation awarded was just and reasonable and there is no need to interfere with the same. He submitted that with interest over a long period of 14 years after the accident, the compensation bulges into a substantial amount and that fact may be taken into consideration and the appeal may be dismissed.

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

“Whether compensation awarded by the Tribunal is just and reasonable or needs re-valuation?”

8) **POINT:** The accident, involvement of tanker bearing No.AP 5 X 2401, lorry bearing No. ADT 4118 and injuries to the claimant and others are all admitted facts. So far as the claimant is concerned, Ex.A.3-Wound Certificate, Ex.A.6-Discharge Summary issued by NIMS, Hyderabad and the evidence of PW.4-K.A.Ramakrishna, Senior Registrar, would show that the claimant suffered two grievous injuries and three simple injuries in the resultant accident. The grievous injuries are head injury with C5/C6 dislocation with pneumocephalus, and fracture medial wall of orbit and frontal sinus in the left side with left frontal pneumocephalus causing mass effect, multiple small pockets of air in the mid line. X-ray cervical spine revealed C5/C6 subluxation, which means slipping of one bone over another. For these injuries, he was treated with Cervical traction under local anaesthesia and reduction was done for cervical traction.

9) Compensation is concerned, the Tribunal awarded @ Rs.15,000/-

each for two grievous injuries. However, it did not award any compensation for other simple injuries as argued by learned counsel for appellant. Considering it, the claimant is awarded @ Rs.2000/- for three simple injuries.

a) The evidence of PW.4 would reveal that the claimant has to undergo another surgery for removal of three hold plates fixed in his body. The claimant has not adduced any record issued by the Doctor showing the probable expenditure that has to be incurred by the claimant for meeting further surgery. The Tribunal has not awarded any compensation for future surgery. Under these circumstances, a reasonable guess work has to be made for awarding comepnasation for meeting the future medical expenses. Accordingly, the claimant is awarded Rs.10,000/- for meeting future medical expenses. The compensation awarded under other heads since found to be reasonable, hence not interfered.

So, the total compensation payable to the claimant under different heads can be described as follows:

For grievous and simple injuries Rs.36,000-00

For medical expenditure Rs.24,284-00

For future medical expenditure Rs.10,000-00

Transport Charges Rs. 350-00

Total Rs.70,634-00

Hence, the compensation is enhanced to Rs.16,000/- (Rs.70,634/-minus Rs.54,634/-).

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

- a. The compensation is enhanced by Rs.16,000/- with proportionate costs and the enhanced compensation shall carry interest @ 7.5% p.a.

- b. The respondents in 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.

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

U.DURGA PRASAD RAO, J

Date: 10.09.2015

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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.3588 of 2009

Dt. 10.09.2015

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