

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1498 of 2009

JUDGMENT:

Challenging the compensation awarded in O.P.No.495 of 2006 dt:12.08.2008 by the Chairman, M.A.C.T-cum-XXII Addl. Chief Judge, City Criminal Court, at Hyderabad (for short “the Tribunal”), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant—Mohd. Moulana is that on 14.12.2005 at about 9:45 pm, while he was proceeding on his scooter bearing No.AP J 4767 from his house at Rajendranagar to Langar house and reached near Hyderguda Cross roads, another scooter bearing No.AP 11 H 378 being driven by its driver at high speed and in a rash and negligent manner, came and dashed the claimant’s scooter, due to which, the claimant fell down and sustained grievous injuries. It is averred that the accident was occurred due to rash and negligent driving by the driver of the offending scooter bearing No.AP 11 H 378. On these averments, the claimant filed O.P.No.495 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondents 1 and 2, who are owner and insurer of the offending scooter and claimed Rs.1,50,000/- as compensation.

b) Respondent No.1 filed counter and urged to put the claimant in strict proof regarding manner of occurrence of accident and the treatment underwent by him. R.1 submitted

that his vehicle was validly insured with respondent No.2/Insurance Company and the liability if any has to be indemnified by R.2 alone.

c) Respondent No.2/Insurance Company filed counter and denied all the material averments made in the petition. R.2 further denied the age, avocation and income of the claimant. R.2 contended that the accident was occurred due to rash and negligent driving of the scooter by the claimant but not due to the driver of scooter bearing No.AP 11 H 378. Finally R.2 contended that compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to A.15 and Ex.X.1 were marked on behalf of claimant. Policy copy filed by 2nd respondent was marked as Ex.B.1.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.40,000/- with costs and interest @ 6% p.a. against respondents 1 and 2 under the different heads as follows:

Pain and suffering	Rs.30,000-00
Medical expenses	Rs. 3,000-00
Extra nourishment & charges	Rs. 2,000-00
Loss of income	Rs. 5,000-00

Total	Rs.40,000-00

Hence, the appeal by claimant.

3) The parties in this appeal are referred as they stood

before the Tribunal.

4) Heard arguments of Sri U.P.Rao, learned counsel for appellant/ claimant and Sri R.Venkata Rao, learned counsel for respondent No.2/ Insurance Company. Though notice sent to R.1 was served but there is no representation on his behalf, hence treated as heard.

5) Impugning the award, learned counsel for appellant/claimant submitted that claimant suffered severe injury with bleeding in the ear and he underwent treatment in Osmania General Hospital and Sarojini Devi Eye Hospital and considering the same compensation may be enhanced since the compensation awarded by the Tribunal was very low and inadequate.

6) Per contra, learned counsel for 2nd respondent/Insurance Company opposed the appeal and submitted that compensation awarded by the Tribunal is just and reasonable and needs no interference.

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:** Admittedly the appellant/claimant met with accident on 14.12.2005 while he was going on scooter, he was dashed by another scooter and suffered head injury. A perusal of the

evidence of PW.2—the Neurologist in Osmania General Hospital and Ex.X.1—case sheet issued by the said Hospital would show that the claimant suffered severe head injury for which he was treated in the said Hospital from 14.12.2005 to 21.12.2005. As per PW.2, the claimant suffered a lacerated wound of 1 x ½ inch over right supra orbital area with bleeding in his ear and the C.T Scan brain revealed bilateral capsulo ganglionic bleeding for which he was treated conservatively. PW.2 avouched that the entire injury was relating to head and was grievous in nature. Speaking about the effect of the injury, the doctor revealed that the claimant will get pain when the body moves and his vision was also effected. Having regard to the above nature of injuries, in the considered view of this Court, the claimant deserves reasonable enhancement of the compensation.

9) Having regard to the severe head injury, compensation for pain and suffering is enhanced from Rs.30,000/- to **Rs.40,000/-**. The Tribunal awarded Rs.5,000/- towards loss of past earnings. However, having regard to the grievous nature of injury to the head which effected the vision of his eye and also having regard to the fact that he was a driver, it can be said that for about 2 or 3 months he could not have attended his driving job and thus lost his income. In such consideration, loss of past earnings is increased from Rs.5,000/- to **Rs.10,000/-**. The compensation awarded under other heads is reasonable and there is no need to interfere with them. Thus

the total compensation payable to the claimant is detailed as below:

Pain and suffering	Rs.40,000-00
Medical expenses	Rs. 3,000-00
Extra nourishment & charges	Rs. 2,000-00
Loss of past earnings	Rs.10,000-00

Total	Rs.55,000-00

So the compensation is enhanced by Rs.15,000/- (Rs.55,000/- minus Rs.40,000/-).

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

- a) Compensation is enhanced by **Rs.15,000/-** with proportionate costs and interest at 7.5% per annum from the date of O.P till the date of realization.
- 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

Date: 25.06.2015
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