

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

M.A.C.M.A. No.3533 of 2009

Between:

Sabbani shankar @ Shankaraiah and others Appellant

And

Matothu Raju and others

.... Respondents

DATE OF JUDGMENT PRONOUNCED: **14.08.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3533 of 2009

JUDGMENT:

Aggrieved by the Award dated 09.03.2006 in O.P.No.174 of 2003 passed by the Chairman, M.A.C.T-cum-IV Additional District Judge, (Fast Track Court), Karimnagar (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

- a. The deceased—Sabbani Shankar was doing vegetable business. On 11.12.2001, when he was travelling in auto bearing No.AP 15 V 4079 to go to Huzurabad and when it reached the outskirts of Kothagattu village at about 5 AM, the driver of the auto drove the same in a rash and negligent manner and at high speed and dashed bullock-cart resulting in auto turned turtle and caused grievous injuries to the 1st claimant (deceased). Immediately, he was shifted to MGM Hospital, Warangal where he took treatment for different spells. It is averred that accident was occurred due to rash and negligent driving of the offending auto driver. On these pleas, the first claimant filed O.P.No.174 of 2003 under Section 166 of Motor Vehicles Act, 1988 (for short “the Act”) against respondent Nos.1 to 3, who are the driver, owner and insurer of the offending auto and claimed Rs.2,00,000/- as compensation.
- b. After filing the claim petition, the first claimant died during the pendency of OP and claimants 2 to 4 were brought on record as LR's. of the first claimant as per orders dated 29.11.2005 in I.A.No.629 of 2005.
- c. R1 and R2 filed separate counters. It is contended that R1/driver had valid driving licence as on the date of accident and as the offending auto was insured with R3—Insurance Company, it was liable to pay compensation, if any.
- d. R3/Insurance Company filed counter denying all the material averments made in the claim petition. R3 further contended that R1/driver was not having valid and effective driving licence as on date of accident and prayed to dismiss the OP.

- e. During trial, PWs.1 to 4 were examined and Exs.A1 to A11 and Ex.C1—case sheet of deceased were marked on behalf of claimants. Policy copy filed by respondents was marked as Ex.B.1.
- f. The Tribunal considering both oral and documentary evidence held that accident was occurred due to fault of auto driver and awarded Rs.93,483/- as compensation against respondents 1 to 3 with proportionate costs and interest @ 7.5.% p.a. under different heads as below:

Pain and suffering	Rs. 10,000-00
Loss of earnings	Rs. 33,000-00
Transportation charges	Rs. 5,000-00
Extra-nourishment	Rs. 5,000-00
Medicines	Rs. 10,483-00
Treatment charges	Rs. 5,000-00
Permanent disability	Rs. 25,000-00

	Total Rs. 93,483-00

Hence, the appeal by claimants.

- 3) The parties in the appeal are referred as they stood before the Tribunal.
- 4) Heard arguments of Sri V.Venkateshwar, learned counsel for appellants/claimants and Sri Bathula Raj Kiran, learned counsel for respondent No.3/Insurance Company. Notice sent to R2/owner was not served. R1/driver dismissed for default vide Court order dated 05.08.2009.

5) Severely criticizing the quantum of compensation as drastically low, learned counsel for appellants/claimants argued that deceased suffered fracture of both bones of his legs and he underwent surgeries 4 to 5 times and he suffered partial permanent disability to both his legs, which incapacitated him from continuing his vegetable vending business as he used to purchase vegetables at Karimnagar and bring them to Huzurabad and sell them in market and in the light of these facts, the compensation awarded by the Tribunal under different heads does not commensurate with the nature of injuries and loss of earnings and hence, compensation needs to be enhanced suitably.

6) Per contra, learned counsel for R3/Insurance Company opposed the appeal contending that compensation awarded under different heads is just and reasonable and there is no need to enhance the same.

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

“Whether the compensation awarded by the Tribunal is just and reasonable and needs interference?”

8) **POINT:** Accident, involvement of auto bearing No.AP 15 V 4079 and injuries to PW1—claimant (long after accident he died and his LRs. were brought on record) are not in dispute.

a) The medical record such as Ex.C1—hospital summary issued by MGM Hospital, Warangal and the evidence of PW2 which are not dispute, would show that PW1 suffered compound fracture of both bones of left leg and fracture of both bones of right leg for which he was treated in MGM Hospital in different spells for a considerable period. PW2—Assistant Civil Surgeon, MGM Hospital, Warangal deposed that PW1 was admitted on 11.12.2001 on which date emergency surgery was done to left leg and external fixation was made. On 16.04.2002, surgery was done to fractured right leg and steel rods were applied. While so, on 18.05.2002 the left leg was again taken up for surgery and ilizarov ring was fixed to the left leg.

Again on 19.06.2002, left leg was taken up for surgery with corcotomy. Then, on 10.07.2002 surgery was done to left leg with Fibular Ostetomy and ultimately he was discharged on 05.08.2002 with an advice of bed rest. He was again admitted on 22.01.2004 for removal of ring fixation and he was discharged on 29.01.2004. PW2 deposed that PW1 cannot walk and ride cycle properly. The above is the evidence of PW2 relating to nature of injuries and type of treatment through surgeries provided to PW1.

b) Then, PW3 who is Civil Surgeon (Orthopedic), District Head Quarters Hospital, Karimnagar deposed that he was the member of Medical Board and he examined PW1 on 22.03.2005 and found malunited fracture of both bones of both legs, musculature of left lower limb and stiffness of left ankle in equines deformity. Having regard to the same, he opined that PW1 suffered 40% partial permanent disability and issued Ex.A10. Thus, PW3 deposed about the disability suffered by PW1 to both his legs.

c) Then, I perused the compensation awarded by the Tribunal under different heads. The Tribunal awarded only Rs.10,000/- towards pain and suffering. Considering the fact PW1 suffered fracture to both bones of both legs and experienced a excruciating pain, the same is enhanced to Rs.**15,000/-**.

d) Then, it is seen the Tribunal awarded a lump sum amount of Rs.25,000/- towards partial permanent disability instead of adopting multiplier system to arrive at just compensation. So compensation under this head needs a revision. As per the evidence of PW3 and Ex.A10—disability certificate, PW1 suffered 40% partial permanent disability which is a physical disability. Basing on the physical disability and nature of his occupation, his functional disability has to be assessed. Prior to accident PW1 was doing vegetable business, getting them from Karimnagar and selling at Huzurabad. As per the evidence of PW2 he cannot walk or ride cycle properly. Therefore, his functional disability can be accepted as 20%. The Tribunal rightly took his earnings as Rs.3,000/- per month. For his age, a multiplier of

‘12’ can be accepted. So, the loss of earnings due to disability comes to Rs.86,400/- (Rs.3,000 x 12 x 12 x 20%). So, the total compensation payable to the claimants is as follows:

Pain and suffering Rs. 15,000-00
Loss of past earnings Rs. 33,000-00
Transportation charges Rs. 5,000-00
Extra-nourishment Rs. 5,000-00
Medicines Rs. 10,483-00
Treatment charges Rs. 5,000-00
Loss of future earnings due to
partial permanent disability Rs. 86,400-00

Total Rs.1,59,883-00

So, the compensation is enhanced by Rs.66,400/- (Rs.1,59,883/- minus Rs.93,483/-)

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

- a. The compensation is enhanced by **Rs.66,400/-** with proportionate costs and simple interest @ 7.5% per annum from the date of OP till the date of realization.
- b. The respondents 1 to 3 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.
- c. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 14.08.2015

Murthy