

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

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

JUDGMENT:

Challenging the compensation awarded in O.P.No.450 of 2003 dated 27.07.2006 by the Chairman, M.A.C.T-cum-III Additional District Judge (F.T.C), at Nalgonda (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—Jangilla Narsimha is that on 31.12.2002 at about 6:30pm, while he was crossing the road at Deepakunta H/o.Kanchanapalli Village, one auto bearing No.AP 24 U 4651 being driven by its driver at high speed and in a rash and negligent manner, dashed him. In the resultant accident, the claimant sustained grievous injuries on backside of his head and temporal region and multiple injuries all over the body. Immediately, the claimant was shifted to Government Headquarters Hospital, Nalgonda and then shifted to Osmania General Hospital, Hyderabad and he has also taken treatment privately. It is averred that the accident was occurred due to rash and negligent driving by the driver of the offending auto. On these averments, the claimant filed O.P.No.450 of 2003 under Sec.166 r/w 140 of Motor Vehicles Act,1988 (for short “M.V.Act”) claiming compensation of Rs.1,00,000/- initially against respondent No.1 and subsequently, added respondent Nos.2 to 4.
- b. Respondent No.1 opposed the claim denying all the material averments made in the petition and contended that he is only the driver of the auto bearing No.AP 24 U 4651 and hence he has nothing to do with the claim petition. He submitted that the said

auto was owned and possessed by one J.Krishna Goud (R.2) and was insured with New India Assurance Company, Nalgonda (R.4) and hence, petition against him is not maintainable and thus prayed for its dismissal.

- c. Respondent No.4/Insurance Company filed counter and denied all the material averments made in the petition and urged to put the claimant in strict proof of the same. R.4 also denied the age, avocation and income of the claimant. R.4 contended that the driver of the auto had no valid and subsisting driving licence to drive the vehicle and also there is no valid policy, as such it is not liable to pay any compensation. R.4 finally contended that compensation claimed is excessive and thus prayed to dismiss the O.P.
- d. Respondent Nos.2 and 3 remained *ex parte*.
- e. During trial, PWs.1 to 3 were examined and Exs.A.1 to A.9 were marked on behalf of claimant. Policy copy filed by respondent No.4 was marked as Ex.B.1. Case sheet was marked as Ex.C.1.
- f. On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.8,000/- with costs and interest @ 7.5% p.a. against respondents 1 to 4 under the following heads:

For injuries Rs.5,000-00

For medical expenses Rs.1,000-00

Loss of income Rs.2,000-00

Total Rs.8,000-00

Hence, the appeal by claimant.

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

4) Heard arguments of Sri Chalakani Venkat Yadav, learned counsel for appellant/claimant and Sri P.Harinath Gupta, learned counsel for respondent No.4/Insurance Company. Though notice to R.1 was served but there is no representation on his behalf, hence treated as heard. Respondents No.2 and 3 are not necessary parties in this appeal vide cause title.

5) Fulminating the award, learned counsel for appellant/claimant argued that the Tribunal without having regard to the nature of head injury spoken by doctors i.e, PWs.2 and 3, treated the injury as a simple one and awarded a pittance to him. He argued that the petitioner/claimant suffered contusions on the occipital region of his brain and it effects his work ability as a teacher and therefore, he deserves reasonable compensation. He thus prayed to allow the appeal.

6) Per contra, learned counsel for respondent No.4/Insurance Company contended that the evidence of the doctors itself would reveal that the head injury suffered by the claimant was only a simple injury and considering the same, the Tribunal rightly awarded reasonable compensation and there is no need to revise the same. 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 compensation awarded by the Tribunal is just and reasonable or needs interference?”

8) **POINT:** PW.2—the Civil Assistant Surgeon in Government Headquarters Hospital, Nalgonda, who examined PW.1 on the date of accident, had deposed that the claimant suffered contusion 2 x 2”

over the right occipital region of skull and there was no bony injury and so it was a simple injury. He issued Ex.A.2—wound certificate. Then PW.3—the Professor Neuro Surgeon in Osmania General Hospital, who examined the claimant on 01.01.2003 i.e, on the following day of accident, had deposed that the he found the closed head injury with middle left temporal contusion and he treated the claimant conservatively and discharged on 02.01.2003. The Tribunal having regard to the nature of injuries deposed by PWs.2 and 3 has granted Rs.5,000/- for injuries, Rs.1,000/- for medical expenditure and Rs.2,000/- for loss of income, totaling Rs.8,000/-. In my considered view, the claimant deserves only a partial enhancement of the compensation under the head injuries, since the injury suffered by the claimant was on his head causing contusion in middle left temporal region. As he suffered injury on the sensitive part of the body and though it was not a grievous one, the compensation under this head is enhanced from Rs.5,000/- to Rs.15,000/-. The compensation awarded by the Tribunal in respect of other heads is held to be just and reasonable. Thus the total compensation payable to the claimant is detailed as below:

For injuries	Rs.15,000-00
For medical expenses	Rs. 1,000-00
Loss of income	Rs. 2,000-00

Total	Rs.18,000-00

So, in the ultimate analysis, compensation is enhanced by **Rs.10,000/-** (Rs.18,000/- minus Rs.8,000/-)

- 9) In the result, this MACMA is partly allowed and ordered as follows:
- a. Compensation is enhanced by **Rs.10,000/-** 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: 18.06.2015

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