

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1175 of 2009

JUDGMENT:

Challenging the compensation awarded in M.V.O.P.No.1481 of 2005 dated 18.08.2006 by the Chairman, M.A.C.T-cum-VI Addl. District Judge, Warangal at Mahabubabad (for short "the Tribunal"), the second and third respondents in O.P., i.e., Branch Manager and Divisional Manager of New Indian Assurance Company Limited, preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 01-07-2005 the claimant along with some others engaged an auto bearing NO. AP 20 V 5860 to go to Gunjedu Musalamma Temple to perform pooja and while they were returning to their homes after completion of pooja, and when they reached Boddugonda outskirts of Gudur Mandal, a auto bearing No. AP 36 V 9568 came in opposite direction being driven by its driver in a rash and negligent manner and dashed the auto of the claimant and in the resultant accident, the claimant and another person by name Surender Reddy sustained grievous fracture injuries. It is averred that due to the accident, he underwent an operation, in which the right leg above knee was amputated and he spent Rs.50,000/- towards medical expenditure. It is also averred that the driver of the auto bearing No. AP 36 V 9568 was responsible for the accident. On these averments, the claimant filed M.V.O.P.No.1481 of 2005 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos. 1 to 3, who are the owner and insurers of the offending auto respectively and claimed Rs.3,00,000/- as compensation under

different heads mentioned in OP.

b) Respondent No.1 remained *ex parte*.

c) Respondent Nos.2 and 3/ Insurance Company filed counter and opposed the petition and urged to put the claimant in strict proof of the same. They further contended that compensation claimed is excessive and exorbitant and prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A45 and Ex.C.1 were marked on behalf of claimant. Policy copy filed by respondents was marked as Ex. B.1. Case sheet was marked as Ex.C.1.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.4,50,400/- with costs and interest at 7.5% p.a. against respondent Nos.1 to 3 as follows:

Loss of dependency	Rs.04,05,600/-
Medicines and extra	
Nourishment	Rs. 15,000/-
For Transport Expenses	Rs. 2,000/-
Pain and Suffering	Rs. 20,000/-
Loss of earnings	Rs. 07,800/-

Total	Rs. 04,50,400/-

Hence, the appeal by the New India Assurance Company Limited.

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

4) Heard arguments of Sri T. Ramulu, learned counsel for appellants/ Insurance Company; Sri A. Prabakar Rao, learned counsel for respondent No.1. Notice sent to R.2/owner of the offending vehicle was not yet returned since he remained *ex parte* before Tribunal, he was treated not a necessary party.

5. Criticizing the Award, the learned for appellant mainly contended that though the claimant suffered only 80% permanent disability, the Tribunal erroneously took it as 100% and computed the compensation for loss of earning power and thereby compensation soared high. He argued that there is no logical justification for Tribunal to accept the disability at 100% in view of the fact that the claimant is an agriculturist and his lands even after the accident remain intact and by engaging coolies, he can earn some income and therefore by virtue of amputation of his right leg and consequent disability, what he and his family lost is his personal supervision and in that view of the matter, the disability need not be taken as 100%. He alternatively argued that the claimant has not produced any record showing that he owned agricultural lands and so strictly speaking, there is no positive evidence to show that he owned agricultural lands and hence neither he was doing personal cultivation nor engaging coolies to cultivate the lands and consequently diminishing of agricultural income due to his disability does not arise. So on that count also, there is no need to fix his disability at 100%. He, thus, prayed to allow the appeal.

6. Per contra, the learned counsel for claimant while supporting the Award, argued that the Tribunal having observed that claimant failed to produce records showing his owning lands such as Pattadarpassbooks and Pahanis etc., has treated him only as an unskilled manual labourer and fixed his monthly income as Rs.2,600/- per month basing on the rates fixed by Minimum Wages Board, Warangal and computed his compensation and in that process, held that due to amputation of right leg, he cannot do any manual work including his claimed (assumed?) agricultural work and accepted the functional disability at 100%. He, thus, argued that the Tribunal accepted 100% of disability on the strength that the claimant was an unskilled manual labourer and due to amputation of his right leg, he cannot now do any manual labour and the said finding is logically and legally correct and therefore, there is no need to re-assess the compensation awarded by the Tribunal. 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 award passed by the Tribunal is just and reasonable or needs re-assessment ?

8) **POINT:** Accident, involvement of two autos and the claimant suffering injuries and amputation of his right leg above knee are all admitted facts. It is an admitted fact that as per Ex.A.7—Disability Certificate, the claimant suffered 80% of permanent disability, which is a physical disability. It is a trite law that when a person suffered permanent disability, duty is cast on the Tribunal to assess the corresponding functional disability, which affects his earning capacity and fix the just compensation

accordingly. In some cases, physical disability and functional disability may be equal and in some cases they may vary. So, the Tribunal taking into consideration the nature of avocation/employment the injured was in prior to the accident and the extent of physical disability that incapacitated him to do such avocation, may fix the percentage of functional disability and then assess the compensation. These aspects have been elaborately discussed by the Hon'ble Apex Court in the case of ***Raj Kumar v.***

Ajay Kumar and another^[1], wherein it was held in para Nos. 8 and 10 as follows:

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation”.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps.

The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity".

9) In the light of the above guidelines of Hon'ble Apex Court, it has now to be seen whether the Tribunal was right in accepting the functional disability of the claimant at 100% though his physical disability is 80%. A reading of para No.18 of the Award shows the Tribunal for want of record showing the ownership of the land, treated the claimant only as an unskilled manual labourer and accordingly computed compensation. In that process, the Tribunal

observed that in view of amputation of his right leg above knee, he cannot do any manual work including his claimed agricultural work. For this reason, it appears the Tribunal has accepted his functional disability at 100%. In my considered view, the finding of the Tribunal is impeccable and does not warrant any interference. The claimant being 50 years old and an amputee of right leg above knee, cannot do any manual labour to earn his income as before and therefore, the Tribunal was right in fixing his functional disability at 100%. Consequently, the compensation fixed under the head loss of earning capacity and other heads is just and reasonable and I see no reason to re-assess the compensation granted by the Tribunal.

10) In the result, this M.A.C.M.A is dismissed by confirming the Award passed by the Tribunal in M.V.O.P.No.1481 of 2005. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 13.07.2015

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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

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