

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

M.A.C.M.A. No.2242 of 2009

JUDGMENT:

Aggrieved by the Award dt.25.01.2007 in O.P.No.725 of 2006 passed by the Chairman, M.A.C.T-cum-V Addl. Metropolitan Sessions Judge (Mahila Court)–cum–XIX Additional Chief Judge, City Criminal Court at Hyderabad (for short “Tribunal”), the claimant preferred the instant M.A.C.M.A.

2 a) On factual side, on 21.11.2005, when the claimant was proceedings in the auto bearing No.AP 28 W 3025 from Mekavanampally to Sadasivpet and at about 9:20 am, the driver of the auto drove the same in a rash and negligent manner and thereby, the auto turned turtle and dragged the claimant to some distance. In the resultant accident, the claimant received multiple injuries all over the body. Thereafter, he was shifted to Gandhi Hospital and there from NIMS Hospital, Hyderabad. It is averred that the accident was occurred due to the rash and negligent driving by the driver of crime vehicle. On these pleas, the claimant filed O.P.No.725 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short “the Act”) against respondents 1 and 2, who are the owner and insurer of the crime vehicle and claimed Rs.2,00,000/- as compensation.

b) R1 remained *ex-parte*.

c) Respondent No.2/Insurance Company in its counter denying the petitioner's case urged to put the claimant in strict proof. It contended that there was no negligence on the part of the driver of the auto. Finally, R.2 contended that the compensation claimed by the claimant was high and excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A9 were marked on behalf of claimant. Ex.B1—copy of insurance policy was marked on behalf of R2.

e) The Tribunal on appreciation of oral and documentary evidence, awarded a sum of Rs.47,000/- with costs and interest at 7% p.a. against the respondent Nos. 1 and 2 as follows:

Pain and suffering	Rs. 20,000/-
Medical expenditure	Rs. 12,997/-
Loss of past income for Two months	Rs. 6,000/-
Loss of future amenities	Rs. 5,000/-
Incidental expenditure	Rs. 3,000/-

Total	Rs. 46,997/-

Rounded of to Rs.47,000/-.

Hence, the appeal by claimant.

3) The parties in the appeal are referred as they are arrayed before the lower Tribunal.

4) Heard arguments of Sri T.D.Phani Kumar, learned

counsel for appellant/claimant and Sri Sriman, learned counsel for R.2/Insurance Company. Though notice to R.1/owner of the crime vehicle was served but there is no representation on his behalf, hence treated as heard.

5 a) Challenging the quantum of compensation as low and inadequate, learned counsel for appellant firstly argued that the Tribunal committed error in awarding only Rs.12,997/- towards medical expenditure though Ex.A.8—Medical Bills show an amount of Rs.20,000/-.

b) Secondly, he argued that though the evidence of PW.2 coupled with E.A.7-Disability Certificate shows that the claimant suffered 25% permanent disability, the Tribunal discarded the same on erroneous ground that PW.2 was not the doctor who treated the claimant and further as per Ex.A.5—Discharge summary issued by NIMS, the condition of the claimant was fair at the time of discharge and he was advised to report immediately in case of severe pain, lack of sensation, weakness of lower limb etc., but there was no evidence that the claimant reported before NIMS with any such complaint and therefore he did not suffer any disability. Learned counsel contended that PW.2 is a qualified Orthopedic surgeon and upon clinical, radiological and physical examination of the claimant and on perusal of his case sheet, he certified the disability of the claimant at 25% and therefore, the Tribunal ought to have relied upon the said evidence and awarded

compensation accordingly for loss of amenities and loss of income. He, thus, prayed to allow the appeal and re-assess the compensation.

6) Per contra, learned counsel for respondent No.2/Insurance Company while supporting the award argued that the claimant did not suffer any disability as he did not report back before NIMS with any post discharge complications at any time which was indicative of his health was perfect. In that view, the evidence of PW.2 and Ex.A.7 can be held as only to help the claimant claim high compensation. In spite of it, the Tribunal generously considered that the claimant might have suffered some disability and awarded Rs.5000/- towards loss of future amenities and therefore, there is no need to re-consider the award. He, thus, prayed to dismiss the appeal.

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

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

8) **POINT:** The first argument of the claimant is that the Tribunal awarded Rs.12,997/- instead of Rs.20,000/- towards medical expenditure. In this context, I perused Ex.A.8— Medical Bills, which roughly comes to Rs.20,000/-. The Tribunal did not suspect the authenticity of the bills. Therefore, the medical expenditure is enhanced to **Rs.20,000/-**.

9) The next argument is with regard to disability. As per Ex.A.5—Discharge Summary issued by NIMS Hospital where the claimant took treatment, he suffered L1 Wedge compression fracture without neurological defects and he also suffered fracture of right superior and inferior pubic rami, for which, he was conservatively treated between 22-11-2005 and 30-11-2005. It is true that in the discharge summary it was mentioned that the condition of the claimant at the time of discharge was fair and he was advised to report immediately in case of severe pain, lack of sensation, weakness of lower limb etc. There is no further evidence that he reported thereafter before NIMS hospital. Be that it may, the evidence of PW.2 coupled with Ex.A.7-Disability Certificate would show that on clinical, radiological and physical examination, PW.2 found that the claimant has been suffering for the past two years with wedge compression fracture without neurological defects and painful movements in the right superior and inferior pubic rami and also reduction of intervertebral disc spaces at D 12 - L1 and L1 - L2 levels and thereby he cannot sit, squat and walk normally and also he cannot work like previously. Due to this physical position, PW.2 certified the physical disability of claimant at 25%. The Tribunal rejected the evidence of PW.2 on the main ground that the condition of claimant was fair at the time of discharge and he did not approach NIMS with any subsequent complaints. In my view, the said observation is not correct.

PW.2 is a qualified Orthopedic Surgeon and his qualification is not disputed in the cross examination. Though he is not the doctor who treated the claimant, still by virtue of his qualification in the relevant field, he can assess the disability of the claimant. He says that on clinical, radiological and physical examination of the claimant and upon perusal of his medical report, he issued Ex.A.7-Disability Certificate. A close scrutiny of his evidence shows that subsequent to the discharge from NIMS hospital, the disc spaces at D 12 – L1 and L1-L2 levels reduced and thereby the claimant has been facing difficulty in sitting, squatting and walking normally and he is also facing difficulty in attending his work. All these defects, it appears, developed subsequently. That he did not approach NIMS hospital with any such complications is not a ground to discard his disability. Therefore, the evidence of PW.2 with reference to physical disability has to be taken into consideration. What he has spoken is about the physical disability and it should be converted in terms of functional disability to assess the loss of future earnings. According to claimant, he was working as tiles Mastry. The Tribunal did not doubt his avocation and in fact took his income as Rs.3,000/- per month basing on the said avocation. So, the physical disability in his back would certainly effect his earning capacity. Therefore, the functional disability is taken at 10%. As the claimant was aged about 33 years, the appropriate multiplier for the said age as per the decision of the Apex

Court in **Smt. Sarla Verma vs. Delhi Transport Corporation**^[1] is '16'. Thus, the loss of future earnings due to 10% disability comes to Rs.57,600/- (Rs.3000 x 12 x 16 x 10). Thus, the total compensation payable to the claimant is detailed as below:

Pain and suffering	Rs. 20,000/-
Medical expenditure	Rs. 20,000/-
Loss of past income for two months	Rs. 6,000/-
Loss of future amenities	Rs. 5,000/-
Incidental Charges	Rs. 3,000/-
Loss of future earnings	Rs. 57,600/-

	Total
Rs.1,11,600/-	-----

Thus the compensation is enhanced by Rs.64,600/-
Rs.1,11,600/- minus Rs.47,000/-)

10) In the result, this M.A.C.M.A. is partly allowed and ordered as follows:

- a) The compensation awarded by the Tribunal is enhanced by Rs.64,600/- with proportionate costs and interest @ 7% per annum from the date of OP till the date of realization; and
- b) Respondents in the OP are directed to deposit the compensation amount within two(2) 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: 29.10.2015

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[\[1\]](#) 2009 ACJ 1298 (SC) = AIR 2009 SC 3104