

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1814 of 2009

JUDGMENT:

Aggrieved by the Award dt:29.01.2009 in M.V.O.P.No.524 of 2006 passed by the Chairman, M.A.C.T-cum-I Additional District Judge, Kadapa (for short "the Tribunal"), the United India Insurance Company Limited/ second respondent in the OP preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the injured claimant is that on 25.12.2005 at about 10:40pm, he and his friend Siva Rama Krishna were going to their respective houses, after attending the works in Kadapa and while they were walking along the Apsara Theatre to RTC bus stand road and reached in front of Raghavendra Mess, a Hero Honda Motorcycle bearing No.AP 04 E 3996 came from opposite direction being driven by its driver at high speed and in a rash and negligent manner and dashed the claimant. In the resultant accident, the claimant sustained fracture of tibia and fibula of left leg and also minor injuries on the right temporal region and right upper lip. It is averred that the accident was occurred due to the fault of driver of offending motorcycle. On these pleas, the claimant filed M.V.O.P.No.524 of 2006 under Section 166 of Motor Vehicles Act (for short "M.V Act") and claimed Rs.15,00,000/- as compensation against respondents 1 and 2, who are the owner and insurer of offending motorcycle respectively.

b) Respondent No.1/owner of the motorcycle filed counter denying the material allegations made in the claim petition and urged the claimant to strict proof of the same. He contended that the compensation claimed is excessive and prayed to dismiss the O.P.

c) Respondent No.2/Insurance Company in its counter contended that Sreenivasulu, the rider of the motorcycle had taken the vehicle without the permission and knowledge of the insured/R.1 and that the accident was occurred due to negligence of the claimant himself as he crossed the road without observing the either side of the road. R.2 denied the avocation of the claimant, nature of injuries sustained by him and treatment underwent by him. Finally it contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 4 were examined and Exs.A1 to A21 and Ex.X.1 were marked on behalf of claimant. No oral or documentary evidence was adduced on behalf of respondents.

e) The Tribunal on appreciation of oral and documentary evidence awarded a total sum of Rs.12,53,458/- with proportionate costs and interest at 6% p.a. under different heads as follows:

For two simple injuries and one grievous injury	Rs.
7,000-00	
For medicines and extra nourishment	
Rs.1,38,457-50	
For transportation charges	Rs.
8,000-00	

For pain and suffering	Rs.1,00,000-00
For loss of amenities, inconvenience, continuing disability and future medical expenses	Rs.4,00,000-00
For loss of earning power	Rs.6,00,000-00

Total	Rs.12,53,457-
50	-----
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(Rounded of to Rs.12,53,458-00)	

Hence, the appeal by Insurance Company.

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

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

5) The point for determination in this appeal is:

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

6 a) **POINT**: This is a classic example of how the Lower Tribunal conferred bonanza to a victim of a motor vehicle accident who neither suffered amputation of any limb nor suffered 100% permanent disability of any organ. The facts and evidence would show that the claimant due to a hit by

motorcycle suffered fracture of left tibia and fibula for which he was treated in Rajshekar Hospital, Bangalore and operated by PW.4. The evidence of PW.4 coupled with Ex.A.6—discharge summary would show that the claimant was treated in the said Hospital between 27.12.2005 and 01.01.2006 during which period PW.4 performed surgery by interlocking and nailing to the fractured tibia and fibula. He issued Ex.A.4—discharge certificate on 04.07.2007 stating that as on that day fracture was showing delayed union and there was stiffness of the left ankle. In the opinion of PW.4 he suffered permanent disability of 60% in the left lower limb. Apart from PW.4, PW.2—Dr.S.Subramanya Rao also treated the claimant in his native place at Kadapa. After claimant was discharged from Rajshekar Hospital of PW.4, he was given post operative follow-up by PW.2 in Sree Sai Nursing Home, Kadapa. The evidence of PW.2 and Ex.A.13—discharge summary issued by him would show that bone grafting was done by PW.2 on 23.11.2006. As per the opinion of PW.2, the claimant suffered shortening of his left leg about 1.25 cms and there is a varied deformity in his left leg and he was walking with limping gait and he would find it difficult to climb the upstairs and walk long distance and he is not able to squat normally or sit cross-legged. Having regard to these problems, PW.2 certified the permanent disability of the claimant at 15% and stated that the claimant has to undergo another surgery for removal of interlocking nails. Whereas PW3 another Doctor who runs Ortho Neuro Physio Care at Kadapa, gave Physiotherapy to PW.1 in different spells.

b) The above is the evidence relating to the injuries suffered, treatment underwent and disability sustained by the claimant. According to the claimant, he was 25 years young person and was working as a driver in Kuwait and earning 145 Kuwait Dinars (Rs.25,000/-) per month prior to the accident and he came to India and was about to leave for Kuwait on 27.12.2005 and he purchased Air Ticket also under Ex.A.15 and in the meanwhile he met with accident. His claim is that due to his disability he became unfit for driving and he lost his job in Kuwait. On these pleas, he claimed Rs.15,00,000/-. The Tribunal under different heads awarded Rs.12,53,458/- as stated earlier.

7) When compensation awarded under different heads is perused, it appears, the Tribunal has not bestowed its proper attention while awarding compensation. For instance, the Tribunal awarded Rs.1,00,000/- under the head pain and suffering. Having regard to the fact that the claimant suffered only one grievous injury i.e, fracture of left tibia and fibula and no other grievous injuries, the amount of Rs.1,00,000/- towards pain and suffering by all means appears to be quite on high side. The reason given by the Tribunal in Para 16 of its award for giving such high amount is also not convincing. It was mentioned that because the claimant underwent two operations i.e, 1) interlocking and nailing and 2) bone grafting, he might have suffered some pain and further, he spent considerable amount for purchase of medicines etc., the said amount of

Rs.1,00,000/- was awarded. It should be noted that Ex.A.6—discharge summary shows that for the primary surgery of interlocking and nailing he was hospitalized only for about 5 days. The later operation i.e, bone grafting was done on 23.11.2006 and during that period he was hospitalized for about one week. So at the outset, during the prime operation period he was hospitalized for about 5 days. Considering these facts, the pain and suffering cannot be said to be an excruciating one. Accordingly, the compensation for pain and suffering is restricted to **Rs.50,000/-**.

8) Then the Tribunal most amazingly awarded Rs.4,00,000/- under the head loss of amenities, inconvenience etc. It may be noted that the Tribunal awarded a separate compensation of Rs.6,00,000/- for the loss of earning power due to disability. It is true that in fit cases, when a disability results in loss of basic amenities and also loss of earning power, the Tribunal can award compensation under both heads as held by the Apex Court in ***S.Manickam vs. Metropolitan Transport Corporation Limited***^[1]. So far as loss of basic amenities are concerned, compensation under this head will be generally granted when a person either due to loss of any organ or amputation of any limb or due to permanent disability, unable to attend his daily pursuits and necessarily depends on others. In the instant case, the difficulties faced by the claimant as spoken by PWs.2 and 4 are such that he is unable to climb upstairs, walk long distance and he limps while walking etc. Except these types of difficulties, the doctors have not stated that the claimant has to

depend on others to a great extent for day-to-day pursuits. Therefore, having regard to the nature of disability and its associated problems, an amount of Rs.4,00,000/- appears to be highly exorbitant sum. Thus, the said amount is restricted to **Rs.2,50,000/-**.

9) Learned counsel for appellant also challenged the compensation awarded by the Tribunal for loss of earning power as high side. However, the evidence on record shows that the claimant was working as driver in Kuwait. Ofcourse there is no proper proof for Ex.A.16—salary certificate allegedly issued by his employer M/s. Al-Jabriya Home Video whereunder the claimant was allegedly working as driver and earning 145 K.D (Kuwait Dinars). Inspite of it, the other record would show that the claimant was residing at Kuwait and he was a qualified driver. Therefore, Ex.A.16 can be taken into consideration. In that context, compensation of **Rs.6,00,000/-** for loss of earning power can be stated to be a reasonable one.

10) Then medical expenditure is concerned, the Tribunal awarded Rs.1,38,457/-. The Tribunal added Ex.A.10 to the other medical bills. Ex.A.10 is only a receipt for advance amount paid to Rajshekar Hospital and in Ex.A.8—final bill said fact is mentioned. Therefore, the amount covered by Ex.A.10 has to be deducted from the total amount in which case the medical expenditure comes to **Rs.1,28,457/-** only. Thus the actual compensation payable to the claimant under different heads can be stated thus:

For two simple injuries and one grievous injury	Rs.
7,000-00	
For medicines and extra nourishment	
Rs.1,28,457-00	
For transportation charges	
Rs. 8,000-00	
For pain and suffering	Rs.
50,000-00	
For loss of amenities, inconvenience, continuing disability and future medical expenses	
Rs.2,50,000-00	
For loss of earning power	
Rs.6,00,000-00	

Total	
	Rs.10,43,457-00

Therefore, the compensation is decreased by Rs.**2,10,000/-**(Rs.12,53,457/- minus Rs.10,43,457/-).

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

- a) The compensation is decreased from Rs.12,53,457/- to Rs.10,43,457/- (Rs.2,10,000/-).
- b) Respondents are directed to deposit the compensation within two(2) 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: 29.09.2015

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[\[1\]](#) 2013 ACJ 1935 (SC)