

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1084 of 2011

JUDGMENT:

Aggrieved by the Award dated 04.03.2011 in O.P.No.1483 of 2009 passed by the Chairman, MACT-cum-XXII Additional Chief Judge, City Criminal Court at Hyderabad (for short “the Tribunal”), the 2nd respondent in the O.P/ New India Assurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

- a. The claimant was working as Software Architect Consultant in Co-Option Technology Limited, Hyderabad. His case was that on 07.03.1999 when he was returning from his office and got down the bus at Malakpet Cross-roads at about 10:00 PM and crossing the road in order to catch another bus towards Santoshnagar side by carefully observing the road side vehicles, a car bearing No.AP 9AY 6111 proceeding towards Dilsuknagar side being driven by its driver in a rash and negligent manner and at high speed and dashed the claimant and thereby he sustained multiple fractures all over the body. Immediately he was shifted to Yashoda Super Specialty Hospital, Malakpet, Hyderabad where he took treatment as inpatient for 25 days by spending huge amount. After discharge also he has undergone physiotherapy treatment. It is averred that the accident was occurred due to the fault of driver of the car. On these pleas, the claimant filed O.P.No.1483 of 2009 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V.Act”) and claimed Rs.25,00,000/- as compensation against respondents 1 and 2 who are the owner and insurer of the offending car.

- b. Respondent No.1/owner remained ex-parte.
- c. Respondent No.2/Insurance Company filed counter denying all the material averments in the petition and contended that driver of the car was not at fault. It also contended that R1 is not the registered owner of the vehicle and has no insurable interest and that the driver who drove the vehicle did not possess valid and effective driving licence at the time of accident. R2 denied the age, avocation and income of the claimant, manner of accident and nature of injuries sustained by the claimant. Finally, R2 contended that compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the O.P.
- d) During trial, PWs.1 to 4 were examined and Exs.A1 to A.27 were marked on behalf of claimant. Policy copy filed by respondent was marked as Ex.B1.
- e) The Tribunal considering the oral and documentary evidence held that driver of the offending car was responsible for the accident. Compensation is concerned, the Tribunal awarded Rs.15,53,884/- with proportionate costs and interest at 7% p.a. under different heads as follows:

Pain and suffering Rs. 1,50,000-00

Permanent disability Rs. 3,00,000-00

Medical and incidental expenses Rs. 7,23,834-00

Loss of income Rs. 3,80,050-00

Total: Rs.15,53,884-00

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they were arayed before

the lower Tribunal.

4) Heard arguments of Sri B.Naresh, learned counsel for appellant/Insurance Company, Sri Mammood Ali, learned counsel for R1/ claimant and Sri Harender Pershad, learned counsel for R2/owner.

5) Challenging the award, learned counsel for appellant/Insurance Company made it clear that he was arguing mainly against the quantum of compensation.

a) Expatiating, he firstly argued that the Tribunal grossly erred in awarding Rs.7,23,834/- towards medical and incidental expenses because the claimant though pleaded that he incurred physiotherapy and nursing charges, did not examine the concerned physiotherapist and nurse in proof of incurring such charges. He only filed Ex.A21—physiotherapy bill and Ex.A22—nursing bills. For want of proof, he argued, the Tribunal ought not to have admitted those bills and granted compensation.

b) Secondly, he argued that Tribunal erred in taking the evidence of PW2 and Exs.A16 to A19 for awarding compensation for loss of income. He argued that PW2 is a Project Manager and he is not concerned with Exs.A16 to A19—salary certificates and his evidence will not help PW1 to prove his employment and salary and therefore, the Tribunal should not have placed implicit reliance on the evidence of PW2 to fix the compensation for loss of income.

c) Thirdly, he argued that the Tribunal wrongly awarded Rs.3,80,050/- for the loss of past income for 11 months without proof of loss of salary for the said period. He contended that Tribunal ought not to have awarded any compensation under the said head. He thus prayed to allow the appeal and reduce the compensation suitably.

6) Per contra, supporting the award, learned counsel for R1/claimant argued that in the resultant accident the claimant suffered severe and life threatening injuries to his skull and he also suffered fracture of both bones of his right leg. As his life was in danger, he was kept in

ICU for 26 days and on ventilator for 7 days which was evident from the deposition of PWs.3 and 4 and medical record covered by Exs.A5 to A8 and in that context of the matter, the compensation awarded under different heads was just and reasonable and cannot be said as excessive and exorbitant. He further argued that PW2 is the Project Manager in Co-Option Technology Limited where PW1 is working as Software Architect and PW2 is the right person to speak about the employment and salary of claimant and the Tribunal rightly placed reliance on the evidence of PW2 for computation of compensation. He further submitted that from March, 2009 to December, 2009 the claimant could not attend his service due to accident, subsequent treatment and rest and therefore, the Tribunal rightly awarded compensation for the loss of past earnings and the same cannot be questioned. He thus prayed to dismiss the appeal.

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

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

8) **POINT:** The accident, involvement of car bearing No.AP 9Y 6111, claimant suffering life threatening injuries are not in dispute.

a) As can be seen from Ex.A5—medical certificate the claimant suffered fracture at the base of skull, fracture of both bones of right leg, polytrauma with head injury with septic shock, pneumocranium tentorial SDH, hemorrhagic contusion of bilateral temporal lobes, fracture of right temporal bone, greater wing of right sphenoid and right zygomatic arch for which he was treated in Yashoda hospital, Malakpet for a considerable period. Further, the evidence of PW3—Consultant Surgical Gastroenterologist and Lap Surgeon would show that claimant was treated in the emergency ward with IV fluids, oxygen and resuscitation with supportive blood transfusion placement of ICD tube into right thorax and also ventilators support

for breathing difficulty etc. He was on ventilator from 08.03.2009 to 15.03.2009 and ultimately he was discharged on 01.04.2009 with a suggestion to take psychotherapy treatment. PW3 opined that there is a chance of affecting natural activities of his brain and chances of developing convulsion in future.

a) Then, PW4—Ortho Consultant-cum-Orthopaedic Surgeon of Yashoda Hospital deposed that on 16.03.2009 he performed surgery to fractured leg of the claimant by fixing screws and K.Wires and POP and he stated that claimant needs another surgery for removal of implants.

c) So, the above is the oral and documentary evidence with regard to nature of injuries suffered, the type of treatment underwent and the future affect of the injuries on his brain. In that backdrop, I perused the compensation awarded by the Tribunal under different heads and the arguments now raised by both sides.

9a) The first argument is relating to medical and other incidental expenses. Under this head the Tribunal awarded a total sum of Rs.7,23,834/-. The argument is that though the claimant pleaded to have incurred physiotherapy charges and nursing maid charges and produced bills, did not examine the concerned physiotherapist and nurse in proof of Exs.A21 and A22 bills. The claimant pleads to have taken physiotherapy treatment with Dr.Ramakanth for six months from June, 2009 to November, 2009 by incurring Rs.45,000/- and similarly, he engaged one Sri Ramulu to nurse him and spent Rs.28,000/-. He produced Exs.A21 and A22 but did not examine the physiotherapist and said Sri Ramulu. In my view, for mere non-examination of those persons the claim of the claimant need not be discarded. It is the evidence of PW3 that at the time of discharge the claimant was advised to take regular physiotherapy treatment and pursuant to such advice the claimant must have taken physiotherapy treatment. Therefore, Ex.A21 can be accepted. Similarly, having regard to the multiple grievous injuries sustained by him, he might have required the assistance of a male nurse during the period of rest

after discharge. So, in considering the totality of facts, the expenditure under Ex.A22 also can be admitted.

b) Then, the next argument of appellant is that Tribunal erred in considering the evidence of PW2 on the aspect of employment and salary of the claimant and it further erred in awarding Rs.3,80,050/- for the alleged loss of past income for 11 months even though there is no proof in that regard.

c) So far as employment of claimant is concerned, PW2 who is the Project Manager in Co-Option Technology Limited, deposed in support of Exs.A16 to A19 to the effect that claimant has been working since 2000 as Software Architect in their organisation and he is skilled in his profession and has been the back bone of their Company. He stated that monthly salary of the claimant is Rs.51,211/-. Then, Ex.A15 is a declaration purported to be made by Senior Executive –HR to the effect that claimant is their employee working as Product Architect since 11.08.2000. Ex.A16 is the salary certificate for the month of May, 2008, as per which, his gross salary was Rs.51,211/-. Ex.A17 is another salary certificate for the month of March, 2009 showing his gross salary at Rs.51,211/-. Exs.A18 and A19 are the salary certificates for the months of January and May, 2010 showing his gross monthly salary as Rs.60,756/-. The evidence of PW1 is that after accident in March, 2009 he did not attend job for a period of 11 months and suffered financial loss. The Tribunal, it appears, having regard to his evidence and also the evidence of PW2 and Exs.A16 to A19 took his net monthly income as Rs.34,550/- and awarded Rs.3,80,050/- ($\text{Rs.34,550/-} \times 11$) towards loss of past earnings for 11 months. This compensation is severely impugned now. I find some force in the contention of learned counsel for appellant. So far as employment of claimant is concerned, no doubt Ex.A15—certificate coupled with evidence of PW2, would show claimant has been working as Software Architect in Co-Option Technology Limited. PW2 may not be directly concerned with the salary aspect of the claimant but he being the Project Manager can speak about the employment of the claimant. Apart from his

evidence, in Ex.A1—FIR which was lodged soon after the accident, the claimant was referred as Software Architect in Co-Option Technology Limited, Banjara Hills. It was further mentioned that the accident in fact was occurred while he was returning home from job. Since the employment details were mentioned in the very first document after the accident, the same can be relied upon. Having regard to his professional skill in software field, the Tribunal's fixation of his net salary at Rs.34,500/- per month cannot be found fault.

d) However, the Tribunal's decision to award loss of past earnings for 11 months cannot be countenanced for the reason that there is no proper evidence for the plea of claimant that for about 11 months he abstained from attending job on loss of pay. It may be true that due to life endangered injuries he might not have attended job from March, 2009 till December, 2009. However, claimant did not produce any certificate from his organisation that all those months, he abstained from work on leave on loss of pay. Therefore, in my considered view, Tribunal was not justified in placing implicit reliance on PW1 for awarding compensation in this regard. As already stated, due to severe injuries he might have abstained from attending job for 11 months. However, since there is no cogent evidence that he abstained from attending work on loss of pay, he will be entitled to a reasonable amount only. Therefore, out of 11 months, 5 months period is deducted on the premise that during that period he absented from job on availing leave without loss of pay and compensation is awarded for the balance 6 months only which comes to Rs.2,07,300/- (Rs.34,550/- x 6). So, in the ultimate analysis compensation under this head is reduced by **Rs.1,72,750/-** (Rs.3,80,050 minus Rs.2,07,300/-).

10) In the result, this MACMA filed by the Insurance Company is partly allowed and ordered as follows:

a) The compensation is reduced by **Rs.1,72,750/-** (Rs.15,53,884/- minus Rs.13,81,134/-).

b) The respondents 1 and 2 in the OP are directed to deposit the compensation amount with costs and interest @ 7% p.a. from the date of OP till the date of realisation 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 petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt. 04.11.2015

Murthy