THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.286 of 2009

JUDGMENT:

Aggrieved by the award dated 24.09.2008 in O.P.No.916 of 2005 passed by the learned XV Additional Chief Judge-cum-I Additional Metropolitan Sessions Judge, Hyderabad (for short 'the Tribunal'), the claimant preferred the instant MACMA on the ground of inadequacy of compensation.

2) Factual side, on 29.07.2004, when the claimant was travelling as pillion rider along with one Venkatesh on Hero Honda Motorcycle bearing No.JH 05 E 5721 and when they reached near Ferozguda bus stand at about 13.30 hours, a van bearing No. AP 09 U 4151 being driven by its driver in a rash and negligent manner and at high speed and dashed the motorcycle of the claimant from behind. Thereby, the claimant fell down and sustained facture to his right hand besides other bleeding injuries all over the body and consequently he suffered permanent disability. Immediately he was shifted to Gandhi Hospital where he undertook treatment as inpatient from 29.07.2004 to 20.08.2004. It is averred that the accident was occurred due to the rash and negligent driving by the driver of the offending van. Hence, the claimant filed O.P.No.916 of 2005 under Section 166 of Motor Vehicles Act, 1988 (for short "MV Act") against respondents 1 and 2, who are the owner and insurer of the offending van and claimed Rs.5,00,000/- as compensation.

3 a) 1st respondent filed counter and opposed the claim denying all the material averments and urged to put the claimant in strict proof. R1 contended that as the offending van is insured with R2, he is not liable to pay any compensation and prays for dismissal of the petition.

b) R2—Insurance Company filed counter denying all the material averments including rash and negligent driving on the part of van driver. R2 contended that van driver had no valid driving licence at the time of accident and disputed the insurance policy.

c) During the trial, PWs.1 to 4 were examined and Exs.A1 to A8 were marked. Ex.B1—copy of copy was marked on behalf of respondent.

d) The Tribunal on appreciation of evidence, has awarded a sum of Rs.1,27,500/- with costs and interest at 6% p.a against respondents 1 and 2 under different heads as follows:

Pain and suffering Rs. 10,000-00

Loss of future earnings Rs. 1,12,500-00

Medical bills Rs. 5,000-00

Total Rs. 1,27,500-00

Hence, the appeal by claimant.

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

5) Heard arguments of Sri Balla Ravindranath, learned counsel for appellant/claimant; Sri Akkam Eshwar, learned counsel for R1/owner and Sri T.Ramulu, learned counsel for R2/ Insurance Company.

6 a) Criticizing the compensation awarded as too low, learned counsel for appellant/claimant firstly argued that Tribunal grossly erred in rejecting the evidence of PW4 and Ex.A7 regarding the employment of the claimant and consequently taking his notional income as Rs.15,000/- as per Second Schedule of MV Act in spite of cogent evidence that claimant is earning Rs.4,000/- per month prior to accident.

b) Secondly, he argued that Tribunal committed an error in not taking into consideration the future prospects of the claimant. He relied upon the following decisions of the Apex Court on the aspect of future prospects.

1. Syed Sadiq vs. Divisional Manager, United India Insurance Company

He thus prayed to allow the appeal and enhance the compensation suitably.

7) Per contra, learned counsel for respondent No.2/Insurance Company argued that compensation awarded was just and reasonable and there is no need to re-assess the same.

8) 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?"

9) **POINT**: The oral and documentary evidence produced by the claimant shows that in the resultant accident he suffered fracture shaft of right humerus with wrist drop which resulted in 50% of physical disability. Then compensation is concerned, in my considered view, the Tribunal has faltered in computation.

a) The income of the claimant is concerned, according to him, he was working as Security Guard in M/s.Vijay Security Services prior to accident. To establish it, he examined PW4—S.Sham Sunder who is said to be the Managing Director of the said organization. He deposed that claimant worked under him since 2001 on a monthly salary of Rs.4,000/- PW4 issued Ex.A7—certificate to this effect. The Tribunal did not accept this evidence on the observation that PW4 did not file any document showing that he was the Managing Director of M/s.Vijay Security Services and that PW1 was paid Rs.4,000/- as monthly salary and further, in Exs.A1 and A2 no mention was made that PW1 was working with M/s.Vijay Security Services. Therefore, the Tribunal fixed the annual income of the claimant at Rs.15,000/- per annum as per Second Schedule of M.V.Act as a non-earning person. The rejection of evidence of PW4 by the Tribunal is correct inasmuch as he has not produced any record showing that PW1 was their employee and he did not produce any record like aquittance register, account books or pay slips to show that PW1 was paid Rs.4,000/- as monthly salary. However, in Exs.A1 and A2 there is no mention that PW1 was the employee of M/s.Vijay Security Services. So, to this extent the Tribunal was right. Further, the Tribunal's treating the claimant as a non-earning person and thereby fixing his notional income at Rs.15,000/- cannot be countenanced for the reason that in Ex.A2—charge sheet the claimant who is shown as LW3 was referred as private worker by the I.O. Therefore, though there is no cogent evidence to the effect that claimant was working with M/s.Vijay Security Services, still there is evidence to the effect that he was having some employment and he is a private worker. Thus, he was not a non-earning member. Having regard to the fact that he was aged about 35 years as per Ex.A3—MLC by the date of accident i.e. 29.07.2004 and that he was a private employee, his monthly income is fixed at Rs.1,500/-.

b) Then going by the dictum laid down by the Apex Court in the cited decisions, 50% is added towards future prospects. Thus, the monthly income of the claimant comes to Rs.**2,250**/- (Rs.1,500/- + Rs.750/-). The annual income which will serve the purpose as multiplicand comes to Rs.27,000/- (Rs.2,250/- x 12). The Tribunal took a correct multiplier of '15' and when the annual income is multiplied with '15', the total income comes to Rs.4,05,000/- (Rs.27,000/- x 15).

c) The above said amount shall be reduced to the extent of functional disability to award compensation. It must be noted here that as per the evidence of PW3 and Ex.A8 the claimant suffered 50% permanent disability in his right hand. This disability is only a physical disability. For computation of compensation the functional disability has to be assessed basing on the nature of employment and restriction of activities of his right hand. PW3 deposed that there is subluxation of right shoulder. Except that he did not mention as to what works the claimant can and cannot perform with his injured right hand. In these circumstances, the functional disability of the claimant is accepted at 40% only. So, the compensation for loss of earning power due to disability comes to Rs.**1,62,000/-** (Rs.4,05,000/- x 40%).

d) Then, the claimant is awarded Rs.**15,000**/- for loss of amenities due to the disability. Thus, the total compensation payable to claimant under different heads is as follows:

Pain and suffering Rs. 10,000-00

Loss of earning power Rs. 1,62,000-00

Medical bills Rs. 5,000-00

Loss of amenities Rs. 15,000-00

Total Rs. 1,92,000-00

So, the compensation is enhanced by Rs.**64,500**/- (Rs.1,92,000/- minus Rs.1,27,500/-).

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

a. Compensation is enhanced by **Rs.64,500/-** with proportionate costs and interest at 6% per annum from the date of OP 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: 08.06.2015

Note: L.R. copy to be marked: Yes / No

Murthy