

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.386 of 2009

JUDGMENT:

Challenging the compensation awarded in M.V.O.P.No.738 of 2001 dated 11.08.2003 by the Chairman, M.A.C.T-cum-II Additional District Judge, East Godavari at Rajahmundry (for short “the Tribunal”), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant—Bojja Murali Krishna Vara Prasad is that on 07.09.2001 at about 7:00am, the claimant was returning from his friends house at Bathinavari Street, Rajahmundry on his motorcycle bearing No.AP 5 S 3864 and when he reached near turning, one auto bearing No.AP 5 U 5281 being driven by its driver in a rash and negligent manner, dashed the motorcycle of the claimant. In the resultant accident, the claimant fell on the road and received injury to his right knee. It is averred that the accident was occurred due to rash and negligent driving by the driver of the offending auto. On these averments, the claimant filed M.V.O.P.No.738 of 2001 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondents 1 to 3, who are driver, owner and insurer of the offending auto and claimed Rs.1,00,000/- as compensation.

b) Respondent Nos.1 and 2 remained *ex parte*.

c) Respondent No.3/Insurance Company filed counter and denied all the material averments made in the petition and urged the claimant to prove that the driver of the auto had valid and effective driving licence to drive the auto and that the vehicle is validly insured with it. R.3 contended that the accident was not occurred due to the rash and negligent driving by the 1st respondent but the claimant himself was responsible for the accident. R.3 further contended that the accident took place on 07.09.2001 but reported the matter to police on 21.09.2001, which implies that the claimant received simple injuries. R.2 finally contended that compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to A.6 were marked on behalf of claimant. Policy copy filed by respondent No.3 was marked as Ex.B.1.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.39,250/- with costs and interest @ 9% p.a. against respondents 1 to 3 under the following heads:

For medical expenses	Rs.12,250-00
For grievous injury and partial disability	Rs.20,000-00
For Pain and suffering	Rs. 5,000-00
For extra nourishment	Rs. 2,000-00

Total	Rs.39,250-00

Hence, the appeal by claimant.

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

4) Heard arguments of Sri Ch.Dhanamjaya, learned counsel for appellant/claimant and Sri Bathula Venkateswara Rao, learned counsel for respondent No.3/Insurance Company. Case against R.1 was dismissed for default vide Court Order dated 21.10.2008. Notice sent to R.2 was not yet returned. Since respondents Nos.1 and 2 remained *ex parte* and suffered decree before the Tribunal, their absence in this appeal is not a consequence in view of decision reported in ***Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma and others***^[1].

5) The main plank of argument of learned counsel for appellant/claimant is that the claimant suffered grievous injuries to his right ankle and in that view of the matter, the compensation awarded under different heads is very low. He thus prayed to allow the appeal.

6) Per contra, learned counsel for 3rd respondent/Insurance Company contended that the compensation awarded by the Tribunal is just and reasonable and there is no need to revise the same.

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

“Whether the compensation awarded by the Tribunal is

just and reasonable or needs interference?”

8) **POINT:** In this case while sending the lower Court record, the office of the Tribunal at Rajahmundry in its letter Dis.No.9268/2014 dated 27.11.2014 submitted that Part II and III record pertaining to O.P.No.738 of 2001 was destroyed as per destruction rules. So this Appellate Court has no opportunity to verify the depositions and exhibits since they were destroyed. Hence I have gone through the judgment of the Tribunal. As per the evidence of PW.2—Dr. Aravindam, who is stated to have treated the claimant and issued Ex.A.3—wound certificate, the claimant suffered deep laceration measuring 2 ½ inch in front of right ankle joint and the great toe was exposed and cut. The claimant was treated for the said injury. PW.2 assessed the disability as 15 to 20%. Ex.A.5 is the disability certificate issued by him. Having regard to the nature of injuries, I am of the considered view that compensation of Rs.5,000/- awarded by the Tribunal for pain and suffering is low and hence the same is enhanced to **Rs.10,000/-**.

9) The claimant was a businessman and he was under treatment from 07.09.2001 to 21.09.2001, the Tribunal has not awarded any compensation for loss of past earnings. It only held that the claimant is not entitled to any compensation for loss of future earnings since he admitted that he was attending to his business and there was no loss of future earnings for him. It may be true but in my view he deserves compensation for loss of past earnings during the period of treatment and rest.

Having regard to the nature of injuries and treatment it can be said the claimant must have absented from his business for a period of 1 ½ months. Considering his occupation as business, he is awarded a sum of **Rs.5,000/-** for loss of past earnings. Thus the total compensation payable to the claimant is detailed as below:

For medical expenses	Rs.12,250-00
For grievous injury and partial disability	Rs.20,000-00
For Pain and suffering	Rs.10,000-00
For extra nourishment	Rs. 2,000-00
For loss of past earnings	Rs. 5,000-00

Total	Rs.49,250-00

So, in the ultimate analysis, compensation is enhanced by **Rs.10,000/-** (Rs.49,250/- minus Rs.39,250/-).

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

- a) Compensation is enhanced by **Rs.10,000/-** with proportionate costs and interest at 9% per annum from the date of O.P 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: 22.06.2015

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[\[1\]](#) 2001 (1) ALT 485