

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.831 of 2010

JUDGMENT:

Aggrieved by the Award dated 21.01-2010 in O.P.No.829 of 2008 passed by the Chairman, M.A.C.T-cum-V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad (for short "Tribunal"), the claimant preferred the instant MACMA.

2) On factual side, on 14.08.2007 at about 7.00 PM, when the petitioner was going to his house by walk from Doodbowli and when he reached near Pardiwada, Puranapool, APSRTC bus bearing No.AP 10Z 3366 being driven by its driver in a rash and negligent manner and at high speed, dashed the claimant. Consequently he fell down on the road and front wheel of the bus ran over his left leg. Immediately he was shifted to Osmania General Hospital, Hyderabad where his left leg below knee was amputated. It is averred that the accident was occurred due to the rash and negligent driving of the bus driver. On these pleas, the claimant filed O.P.No.829 of 2008 under Section 163A of Motor Vehicles Act, 1988 (for short "the Act") against respondents/APSRTC and claimed Rs.8,00,000/- as compensation.

c) Respondents/APSRTC filed counter and opposed the claim denying all the material averments made in the petition. They contended that there is no negligence on the part of driver of the bus and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 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 has awarded a sum of Rs.2,62,151/- with costs and interest @ 7.5% p.a under different heads as follows:

Loss of income due to disability Rs. 2,59,200-00

Medical expenditure Rs. 951-00

Transportation charges Rs. 2,000-00

Total Rs. 2,62,151-00

Hence the appeal by claimant.

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

4) Heard arguments of Sri C.Vikram Chandra, learned counsel for appellant/claimant and Sri K.Madhav Reddy, learned counsel for respondents/APSRTC.

5 a) Impugning the award, learned counsel for appellant/claimant argued that the compensation awarded is grossly low without taking into consideration the ground realities. Expatiating it, firstly he argued that Tribunal did not grant any compensation for pain and suffering of the claimant in spite of the fact that his left leg was amputated below knee.

b) Secondly, he argued that while calculating compensation for disability, the Tribunal took a very low amount of Rs.3,000/- as the income of the deceased. He argued that claimant was a labour contractor prior to the accident and he was earning Rs.8,000/- per month and this fact was totally ignored by the Tribunal. The Tribunal has also not added future prospects to his earnings.

c) Thirdly, he argued that the Tribunal took a low percentage of disability for computation of compensation. He submitted that 45% of disability mentioned in Ex.A7 is only a physical disability but function wise his disability is 100%, as the claimant is not able to attend any works after accident. Therefore, compensation has to be re-assessed taking all these facts into consideration. He thus prayed to allow the appeal.

6) Per contra, while opposing the appeal, learned counsel for respondents/APSRTC argued that compensation awarded was just and reasonable and there is no need to interfere with the same. He submitted that claimant has not produced any tangible evidence to show that he is working as labour contractor and earning Rs.8,000/- per month and therefore, Tribunal rightly fixed his earnings as Rs.3,000/- per month. The compensation under other heads is also just and reasonable. 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 a) **POINT**: Accident, involvement of APSRTC bus bearing No.AP 10Z 3366, injuries to the claimant and resulting amputation of his left leg below knee are established facts. The bone of contention is the quantum of compensation. Upon perusal of record and hearing the arguments, this Court is of the considered view that compensation awarded by the Tribunal is not just and reasonable and needs re-assessment.

b) As rightly argued by the claimant, the Tribunal has not awarded any compensation for pain and suffering. It is evident that claimant suffered injures and consequently his left leg was amputated below knee. It is needless to say that he must have experienced excruciating mental and physical pain. In such consideration, he is awarded Rs.**25,000/-** for pain and suffering.

c) So far as compensation for disability is concerned, the Tribunal, it appears, for want of proper evidence regarding the occupation of the claimant as labour contractor, fixed his monthly income at Rs.3,000/-. To that extent the Tribunal was right. However, it has not taken into consideration the future prospects of the claimant. The Apex Court in the decision reported in ***Rajesh and others vs. Rajbir Singh and others*** has held that future prospectus have to be taken into consideration. Hence, a sum of Rs.1,000/- is added towards future

prospects. Thus, his annual income comes to Rs.48,000/- (Rs.4,000/- x 12).

d) Then, the Tribunal accepted 45% disability as mentioned in Ex.A7 —disability certificate. As rightly argued by the claimant, the disability mentioned in Ex.A7 is only physical disability. As per the dictum laid by the Apex Court in ***Raj Kumar vs. Ajay Kumar and another***, basing on the age, avocation his functional disability has to be assessed. Prior to the accident the claimant was said to be working as a labour contractor. His vigorous movements to construction spots is necessary for procurement of labour to supply to the builders. By virtue of amputation of his left leg certainly his movements are restricted which will have adverse effect on his earnings. Therefore, his functional disability is accepted as **60%**. Then, the Tribunal took the multiplier ‘16’ which is a correct one. Thus for loss of income due to disability comes to Rs.**4,60,800/-**. (Rs.48,000/- x 16 x 60%).

e) Apart from above, the claimant deserves compensation for loss of basic amenities due to his physical disability as he cannot undertook certain works by his own as he has to depend on others. Accordingly, he is awarded **Rs.20,000/-** towards loss of basic amenities.

Thus, the total compensation payable to the claimant is detailed as below:

Pain and suffering	Rs. 25,000-00
Loss of income due to disability	Rs. 4,60,800-00
Loss of basic amenities	Rs. 20,000-00
Medical expenditure	Rs. 951-00
Transportation charges	Rs. 2,000-00

Total	Rs. 5,08,751-00

Thus, compensation is enhanced by Rs.**2,46,600/-** (Rs.5,08,751/- minus Rs.2,62,151/-).

9) The MACMA is partly allowed and ordered as follows:

1. The Compensation is enhanced by Rs.**2,46,600/-** with proportionate costs and interest @ 7.5% per annum from the date of OP till realization.
2. The respondents/APSRTC 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: 27.03.2015

Note: L.R. Copy to be marked: YES/NO

Murthy