

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1561 of 2009

JUDGMENT:

Aggrieved by the Award dated 02.11.2006 in O.P.No.865 of 2005 passed by the MACT-cum-District Judge, West Godavari at Eluru (for short 'the Tribunal'), the 3rd respondent/Oriental Insurance Company Limited preferred the instant MACMA.

2 a) On factual side, on 15.05.2005 when the claimant and his son by name Bhanu Prasad were proceeding on their motorcycle and when they reached near Ring Road at Ashram Hospital, Eluru, a lorry bearing No.AP 21 W 3269 being driven by its driver in a rash and negligent manner and at high speed came in the opposite direction and dashed the motorcycle. Due to which the claimant fell down on the road, received grievous injuries and spent considerable amount for treatment. It is pleaded that accident was occurred due to fault of lorry driver. On these pleas claimant filed OP No.865 of 2005 against respondents 1 to 3, who are the driver, owner and insurer of offending lorry and claimed Rs.15 lakhs as compensation.

b) The Tribunal on appreciation of evidence on record, has awarded total compensation of Rs.7,44,597/- against respondents under different heads as follows:

Loss of income due to disability	Rs. 2,53,440-00
Fracture injuries	Rs. 75,000-00
Medical expenses	Rs, 1,86,157-00
Future medical expenses	Rs. 2,00,000-00
Pain and suffering	Rs. 10,000-

00	Attendant charges	Rs. 10,000-
00	Extra-nourishment	Rs. 10,000-
00		-----
	Total	Rs.
7,44,597-00		-----

Hence the appeal by the Insurance Company.

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

4) Heard arguments of Smt.I.Mammu Vani, learned counsel for appellant/ Insurance Company and Sri Kambhampati Ramesh Babu, learned counsel for respondent No.1/claimant. Though notice to R2 and R3/ driver and owner of lorry were served but there is no representation on their behalf, hence treated as heard.

5) In this appeal, the appellant challenged only the quantum of compensation.

a) Firstly, criticizing the Tribunal taking Rs.5,000/- p.m as income of the petitioner for computation of compensation for loss of income due to disability, learned counsel argued that in case of death or disablement of an agriculturist in an accident, his source of income i.e, lands remain intact and in such a case the income out of agriculture will not be lost altogether and in order to get the same agricultural income, either the L.Rs of the deceased or the injured-agriculturist have to incur supervisory charges and

the quantum of supervisory charges incurred by them alone have to be taken into consideration for computation of compensation. Learned counsel submitted that in this case the petitioner is alive and is only disabled and hence, though he cannot personally cultivate the lands, still he can engage coolies and use his agricultural skills and get the same agricultural income as he used to get earlier. In case of death of an agriculturist, the L.Rs of the deceased have to necessarily engage an agriculture knowing person to cultivate the lands to get the same agricultural income. In such a case, they have to spend more amount on the agricultural knowing person. However, in the instant case, since the petitioner is alive, he can engage only ordinary coolies and do the cultivation and therefore, he can incur less expenditure on ordinary coolies. In that context of the matter, learned counsel argued, the supervisory charges to be incurred by the petitioner on ordinary coolies will not be more than Rs.3,000/- p.m. Therefore, the Tribunal ought to have taken the said amount for computation of compensation. Instead it took Rs.5,000/- which is on high side and thereby, compensation was unduly escalated.

b) Secondly, learned counsel for appellant argued that the Tribunal erred in awarding Rs.75,000/- i.e, @ Rs.25,000/- for fracture injuries. Her argument is that since the Tribunal awarded a separate compensation for loss of income due to disability, there is no need to award compensation for fractures which amounts to duplication.

c) Thirdly, learned counsel argued that the Tribunal erred in

awarding Rs.2,00,000/- towards future medical expenditure without there being any cogent evidence in this regard.

Learned counsel thus prayed to allow the appeal and reassess the compensation.

6) Per contra, learned counsel for 1st respondent/claimant supported the award and argued that there is no need to revise the compensation since the same is just and reasonable.

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**: As can be seen from the evidence of PW.4 and Ex.A.8—disability certificate, the petitioner due to fixed flexion deformity of 40 degrees of his right elbow joint and intra capsular fractured neck of right femur, suffered 55% of disability. The petitioner is an agriculturist. The Tribunal awarded Rs.2,53,440/- for loss of earning power due to disability. In awarding the aforesaid amount, the Tribunal having regard to the fact that the petitioner is having two tractors and cultivating Ac.4.92 cents of the land belonging to his wife, fixed his monthly income as Rs.5,000/-. Having regard to his age as 47 years, the Tribunal selected ‘7.68’ as multiplier. Thus it arrived at Rs.2,53,440/- (Rs.60,000/- x 7.68 x 55 %).

a) As narrated supra, the first argument of the appellant is that the Tribunal erred in taking Rs.5,000/- as the income of the

petitioner. The contention of learned counsel is that since the lands are intact and income out of the lands is also intact, the supervisory charges incurred by the petitioner shall alone be taken into consideration. Though the argument of learned counsel for appellant is apparently correct, the net result, in my view, is the same. The Tribunal fixed the income of the petitioner as Rs.5000/- and computed compensation. Even if, the supervisory charges to be incurred by the petitioner alone are taken, still the same amount of Rs.5000/- has to be taken up for computation. Now a days, without investing a minimum amount of Rs.2,500/-, it is difficult to get the services of one coolie per month. Since the petitioner has to attend the agriculture work of about Ac.5.00, he has to engage minimum two coolies to supervise lands on his behalf in addition to using his agricultural skills. In such an event also, the supervisory charges per month comes to Rs.5000/-. Hence, I find no much force in the first argument of the learned counsel.

9) The second argument is that since the Tribunal awarded compensation for disability, it ought not have awarded compensation of Rs.75,000/- for fracture injuries, which amounts to duplication. I am afraid, this argument is not correct. The Tribunal awarded sum of Rs.75,000/- for three fracture injuries, which resulted in physical disability, whereas, the compensation for loss of income was awarded due to functional disability. It is needless to emphasise that a person who suffered disability in a motor vehicle accident deserve compensation both for physical

disability (for loss of amenities) and functional disability (loss of income). It was so held by the Apex Court in the case **S. Manickam Vs. Metropolitan Transport Corporation Ltd**^[1]. Hence, I find no force in this argument.

10) The third argument is with regard to the compensation for future medical expenditure. I find some force in the argument. As per the estimate given by PW.2, the petitioner has to incur an appropriate expenditure of Rs.2,50,000/- for undergoing surgery to hip and elbow. This is only an oral estimate and PW.2 has not furnished any details of the expenditure. Nor claimant obtained item wise expenditure in writing for perusal. Hence, in my view, a reasonable amount of Rs.1,50,000/- will meet the ends of justice and so the future medical expenditure needs to be reduced from Rs.2,00,000/- as awarded by the Tribunal to Rs.1,50,000/-.

So, the total compensation amount payable to the claimant is as follows:

Loss of income due to disability	Rs.
2,53,440-00	
Fracture injuries	Rs. 75,000-00
Medical expenses	Rs, 1,86,157-00
Future medical expenses	Rs.
1,50,000-00	
Pain and suffering	Rs.
10,000-00	
Attendant charges	Rs.
10,000-00	
Extra-nourishment	Rs. 10,000-00
00	

Total	Rs. 6,94,597-00

So, the compensation is reduced by Rs.50,000/-
(Rs.7,44,597/- minus Rs.6,94,597/-)

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

i) Compensation is reduced by Rs.50,000/- and the 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.

ii) No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 19.01.2015

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

scs / eha

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