

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1525 of 2010

JUDGMENT:

Challenging the compensation awarded in M.V.O.P.No.615 of 2006 dated 21.06.2010 by the Chairman, M.A.C.T-cum-I Additional District and Sessions Judge, Ranga Reddy district at L.B.Nagar, Hyderabad (for short "the Tribunal"), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The claimant is a practicing advocate at Hyderabad. His case is that on 15.10.2005 while he was returning from Tirupati to Hyderabad in a private Volvo bus bearing No. AP 9X 8889, on the way the driver drove the bus in a rash and negligent manner and at high speed and lost control and as a result, the bus turned turtle on the road side ditches. Due to which, the claimant received grievous injuries. It is averred that the accident occurred due to rash and negligent driving of the driver of offending bus. On these pleas, the claimant filed M.V.O.P.No.615 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 to 3, who are the driver, owner and insurer of the offending bus and claimed compensation of Rs.7,88,572/-.

b) Respondents 1 and 2 remained *ex parte*.

c) The 3rd respondent/Insurance Company filed counter denying all the material averments in the petition and urged to put the claimant in strict proof of the same. R3 further contended that there was no negligence on the part of 1st respondent-driver. It is also contended that claim is excessive and untenable and prayed to dismiss the OP.

d) During trial, PWs.1 to 5 were examined and Exs.A1 to A16 were marked on behalf of claimant. No oral or documentary evidence was adduced on behalf of respondent.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.1,40,200/- with costs and

interest at 7.5% p.a under different heads as follows:

Pain and suffering Rs. 10,000-00

Medical expenses Rs. 25,000-00

Transportation Rs. 5,000-00

Head injury Rs. 20,000-00

Fracture injuries Rs. 45,000-00

Loss of income (for two months

@ Rs.15,000/- p.m.) Rs. 30,000-00

Damages to clothing Rs. 5,000-00

Total Rs. 1,40,000-00

Hence, the appeal by the claimant.

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

4) Heard arguments of Sri K.Ramesh Kumar, learned counsel for appellant/claimant. Notice sent to R1 and R3/driver and insurer was served but no representation on their behalf. Notice sent to R2/owner unserved.

5 a) Challenging the compensation awarded by the Tribunal as too low, learned counsel for the appellant/claimant firstly argued that the claimant was 70 years old person and a practicing advocate by the date of accident and he suffered fracture of 5 ribs on left side besides head injury, for which, he took treatment and inspite of grievous injuries suffered by him, the Tribunal awarded a low compensation of Rs.10,000/- towards pain and suffering against the claim of Rs.1,50,000/-.

b) Secondly, he argued that in view of the fracture injuries suffered by

the claimant at his old age, it took about six months to him to recover from the injuries and in the meanwhile, he lost his professional income and therefore, he claimed a reasonable amount of Rs.2,40,000/- i.e., @ Rs.40,000/- per month for loss of past earnings, but the Tribunal awarded a paltry sum of Rs.30,000/-.

c) Thirdly, he argued that the Tribunal has not awarded any compensation for loss of future earnings though he deserves the same. He relied upon the judgments of the Hon'ble Apex Court reported in **Divisional Controller, KSRTC v Mahadeva Shetty and another, R.D.Hattangadi v Pest Control (India) Private Limited and others** and **Rekha Jain v National Insurance Company Limited and others**. He, thus, prayed to allow the appeal and enhance the compensation.

6) Per contra, the learned counsel for respondent No.3/Insurance Company argued that the compensation awarded was just and reasonable and there is no need to review the same.

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) **POINT:** A perusal of the evidence shows that the claimant suffered fracture of 5 to 9 ribs on the left side besides head injury. The claimant was aged about 70 years by the time of accident. Having regard to the fact that he suffered grievous injuries at his old age, it can be inferred that he had experienced excruciating pain and suffering. In that context of the matter, awarding of Rs.10,000/- towards pain and suffering is quite disproportionate to the nature of the injuries. Therefore, taking fracture of five ribs and head injury into consideration, the compensation for pain and suffering is enhanced to Rs.30,000/-.

9) Then loss of past earning is concerned, the claimant claimed Rs.2,40,000/- for loss of past earnings from 15.10.2005 to 15.04.2006 i.e., @ Rs.40,000/- per annum. The Tribunal, however, awarded Rs.30,000/- on the premise his monthly income was

Rs.15,000/- and it took two months for him to recover from the injuries. It is common that in case of old people, the recovery process will be slow. Therefore, in the considered view of this Court, the claimant must have abstained from attending the Court at least for a period of four months during treatment and rest. In such consideration, the compensation is enhanced from Rs.30,000/- to Rs.60,000/-.

10. So far as the claim of loss of future income is concerned, the evidence on record does not show that the claimant suffered any disability due to the injuries. Therefore, he does not deserve compensation in this regard. The cited decisions will not help his cause. So, in the ultimate analysis, the compensation is enhanced by Rs.50,000/-.

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

- a) The compensation is enhanced from Rs.1,40,000/- to Rs.1,90,000/- with proportionate costs and simple interest at 7.5% P.A. from the date of O.P. till the date of realization; and
- 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: 22.04.2015

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

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