

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**M.A.C.M.A. No.1266 of 2009**

**JUDGMENT:**

Aggrieved by the Award dt:12.12.2008 in O.P.No.389 of 2006 passed by the Chairman, M.A.C.T-cum-Special Sessions Judge-cum-XXII Addl. Chief Judge, City Criminal Courts, at Hyderabad (for short 'the Tribunal'), the claimant preferred the instant appeal.

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

3) The factual matrix of the case is thus:

a) On 05.12.2005 at about 11:45 pm, the claimant was proceeding in an auto bearing No.AP 36 W 1737 from Rasoolpura to Begumpet and when it reached Vinuthana Residency, Keral one Tata Indica car bearing No.AP 09 Y 2431 came from opposite direction being driven by its driver in a rash and negligent manner and dashed the auto. In the resultant accident the claimant received grievous fracture injuries and sustained permanent disability. It is averred that the accident was occurred due to rash and negligent driving by the driver of the Tata Indica Car. On these pleas, the claimant filed O.P.No.389 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent Nos.1 and 2, who are owner and insurer of the offending Tata Indica Car and claimed Rs.3,00,000/- as compensation.

b) R.1 remained *ex parte*.

c) R2/Insurance Company filed counter and denied all the material averments made in the petition and urged to put the claimant in strict proof of the same. R.2 contended that the accident was occurred due to the fault of claimant himself but not due to the negligence on the part of driver of Tata Indica car. R.2 finally contended that the compensation claimed is highly excessive and he thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A11 were marked on behalf of claimant. Policy copy filed by 2<sup>nd</sup> respondent was marked as Ex.B.1.

e) The Tribunal on appreciation of both oral and documentary evidence awarded a total sum of Rs.42,000/- with proportionate costs and interest at 9% p.a against respondents under different heads as below:

|                                     |                    |
|-------------------------------------|--------------------|
| <u>Pain and suffering</u>           | <u>Rs. 25,000-</u> |
| <u>00</u>                           |                    |
| Medical expenses                    | Rs. 10,000-00      |
| Extra-nourishment and other charges | Rs. 5,000-00       |
| Loss of income                      | Rs. 2,000-00       |
|                                     | -----              |
| Total                               | Rs. 42,000-00      |
|                                     | -----              |

Hence, the appeal by claimant.

4) Heard arguments of Sri Kasireddy Jagathpal Reddy, learned counsel for appellant/claimant and Sri Kota Subba Rao, learned counsel for respondent No.2/Insurance Company. Though notice to respondent No.1 was served but there is no

representation on his behalf, hence treated as heard.

5 a) Criticizing the compensation awarded as low and inadequate, learned counsel for appellant/claimant argued that though the claimant suffered 50% of disability as spoken by PW.2, the Tribunal did not consider the same and grant any compensation for disability and consequent loss of earning power. Learned counsel argued that the appellant is an auto driver and the disability in right lower limb affects his profession.

b) Secondly, learned counsel argued that the Tribunal has not granted any compensation for meeting future medical expenditure since the claimant needs to undergo surgery for removal of the implants.

c) Thirdly, he argued that the claimant underwent hospitalization and rest for about one month and during that period he lost his earnings but the Tribunal awarded a paltry sum of Rs.2,000/- towards loss of past earnings. He thus prayed to allow the appeal and enhance the compensation suitably.

6) Per contra, while supporting the award learned counsel for R.2/ Insurance Company argued that compensation awarded was just and reasonable and there is no need to interfere with the same. He argued that PW.2 was not the doctor who treated the claimant and Ex.A.8—disability certificate issued by him had no sanctity because he has not mentioned therein as to what scale he has applied to arrive at 50% disability. Learned counsel contended that the claimant was treated in Gandhi Hospital and

had he really suffered any disability, he ought to have obtained disability certificate issued by the Medical Board constituted by the authorities of the said hospital. He thus prayed to dismiss the appeal.

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:** The accident, involvement of auto bearing No.AP 36 W 1737 and Tata Indica car bearing No.AP 09 Y 2431 and claimant suffering injuries are not in dispute. A perusal of Ex.A.5—discharge card issued by the Gandhi Hospital, Secunderabad shows that the claimant suffered 1) closed fracture shaft femur, 2) inferior pubic rami fracture (right), 3) superior and inferior pubic rami fracture (left) and 4) iliac wing fracture (right), for which he was treated as inpatient from 06.12.2005 (*sic* 06.12.2006) to 09.01.2006 and he was treated by open reduction and internal fixation of K-nail. This is about the nature of injuries suffered and treatment provided to him in Gandhi Hospital. Be that it may, PW.2—an Orthopedic Professor in Medcity Institute of Medical Science, Ghanapur, upon examination of the claimant on 06.06.2008 issued Ex.A.8—disability certificate. According to him, the X-ray revealed severe restriction of movements of right hip and thereby the claimant experiences pain and he was limping while walking and he is not able to walk without the help of walking stick. On these observations, he opined that the

claimant suffered partial permanent disability of 50% in his right lower limb. In the cross-examination he admitted that as per Ex.A.11—X-ray report, all the fractures were united and no malunion of bone was mentioned in it. The Tribunal it appears discarded his evidence on the ground that there were no malunion in the bones and he was not the treatment doctor and further the claimant ought to have approached the Medical Board of Gandhi Hospital for obtaining disability certificate. In my considered view, the Tribunal was only partially right. It is true that since the claimant was treated in Gandhi Hospital, in the normal course he ought to have obtained a disability certificate from the Medical Board of that hospital. However, merely because he did not obtain the disability certificate from the said hospital, on that ground alone the disability certificate obtained by him from another doctor cannot be discarded. As per the decision of Apex Court reported in ***Raj Kumar vs. Ajay Kumar and another***<sup>[1]</sup>, any qualified doctor who upon clinical examination of the patient can issue the disability certificate. Ofcourse he should give evidence in the Court as to how he arrived at his opinion on the disability and offer himself for cross-examination of the other side. In this case, the qualification of PW.2 as an Orthopedic Surgeon is not in dispute. The only ground on which the percentage of disability given by him can be doubted is that his admission to the effect that Ex.A.11—X-ray report which he perused for issuing Ex.A.8—disability certificate reveal that all fractures were united and there was no mention about any malunion. So taking the totality of the circumstances,

the disability of 50% as propounded by him cannot be accepted but the restriction of the movement of right lower limb due to fractures suffered by the claimant to his lower part of the body can be taken into consideration and his functional disability as auto driver can be accepted as 10%. The claimant deserves compensation for loss of earning power due to said disability. The Tribunal considered his monthly income as Rs.2,000/- which is reasonable one. His gross annual income comes to Rs.24,000/-. For his age, '15' is taken as multiplier. Thus the loss of earning power due to disability is arrived at **Rs.36,000/-** (Rs.24,000/- x 15 x 10%).

9) Sofaras future medical expenditure is concerned, the claimant has not produced any proper evidence about the need for undergoing further surgery. Hence, the claim under the said head is rejected. Compensation awarded under other heads is considered as reasonable and hence there is no need to interfere with the same.

Thus the total compensation payable to the claimant under different heads is detailed as below:

|                                         |                      |
|-----------------------------------------|----------------------|
| <u>Pain and suffering</u>               | <u>Rs. 25,000-00</u> |
| Medical expenses                        | Rs. 10,000-00        |
| Extra-nourishment and other charges     | Rs. 5,000-00         |
| Loss of income                          | Rs. 2,000-00         |
| Loss of earning power due to disability | Rs. 36,000-00        |
|                                         | -----                |
| Total                                   | Rs. 78,000-00        |
|                                         | -----                |

So at the outset, the compensation awarded by the

Tribunal is enhanced by Rs.36,000/- (Rs.78,000/- minus Rs.42,000/-).

10) In the result, this M.A.C.M.A is partly allowed and ordered as follows:

- a) The compensation is enhanced by **Rs.36,000/-** with proportionate costs. The enhanced compensation shall carry interest @ 7.5% per annum from the date of OP till the date of realization.
- b) Respondents are directed to deposit the compensation within two (2) 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.

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**U. DURGA PRASAD RAO, J**

Date: 08.09.2015

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[\[1\]](#) (2011) 1 SCC 343 = (2011) 1 SCC (Cri) 1161