

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. No.3578 of 2009

JUDGMENT:

Aggrieved by the Award dated 15.02.2005 in O.P.No.301 of 2003 passed by the Chairman, MACT-cum-IV Additional District Judge (FTC), Siddipet (for short "the Tribunal), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 11-08-1997 at about 04.00 PM the claimant was traveling in a bus bearing No.AP 10 Z 3113 from Tirupathi to Siddipet and when the bus reached near Boravelly Bus Stage, one lorry bearing No.ATT 3330 came in opposite direction being driven by its driver in a rash and negligent manner and dashed the bus. In the resultant accident, the driver and spare driver of the bus died on the spot and the claimant received injuries all over the body together with fracture injury. He pleaded that he took treatment in several hospitals and spent an amount of Rs.60,000/- towards medical expenses. It is averred that the accident was occurred due to the rash and negligent driving by the driver of the offending vehicle. On these pleas, the claimant filed OP No.301 of 2003 under Sec.166 of Motor Vehicles Act (for short "M.V.Act") against respondents 1 and 2, who are the owner and insurer of the offending vehicle and claimed Rs.2,00,000/- as compensation.

b) Respondent No.1 filed counter denying all the material averments made in the petition and urged to put the claimant in strict proof of the same. He further submitted that the accident was occurred due to rash and negligent driving by the driver of the RTC bus.. Hence, the claimant is not entitled for any compensation. He thus prayed to dismiss the O.P.

c) Respondent No.2/Insurance Company opposed the claim

contending that the driver of the lorry had no valid and effective driving license at the time of accident and so it is not liable to pay any compensation. Finally, it contended that the claim is highly excessive and exorbitant and prayed for dismissal of the OP.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A17 were marked on behalf of the claimant. Policy copy filed by 2nd respondent was marked as Ex.B.1.

e) The Tribunal on appreciation of oral and documentary evidence awarded a sum of Rs.86,043/- with proportionate costs and interest at 9% p.a. against respondents 1 and 2 under different heads as follows:

Loss of salary	Rs.46,000-00
Pain and Suffering and transport expenses	Rs.25,000-00
Medical Expenses	Rs.15,043-00

Total	Rs.86, 043-00

Hence the appeal.

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

4. Heard arguments of Sri P.Venkat Reddy, learned counsel for Appellant/Claimant, Sri V.R.Reddy Kovvuri, learned counsel for respondent No.1 and Sri C.V. Rajeeva Reddy, learned counsel for R2/ Insurance Company.

5 a) Fulminating the Award, learned counsel for appellant, firstly argued that though the Tribunal basing on the evidence produced by the claimant agreed that the claimant suffered loss of pay of Rs.75,000/- and odd, awarded only Rs.46,850/- by erroneously restricting his claim to 52 weeks and therefore, the claimant is entitled to the compensation for loss of salary to full extent.

b) Secondly, learned counsel argued that the compensation awarded for medical and other incidental expenses is also very low and it also

needs re-valuation.

c) Thirdly, learned counsel argued that though the claimant suffered 20% of disability, the Tribunal did not grant any compensation in that regard and thus prayed to allow the appeal and enhance the compensation to the extent claimed in the OP.

6 a) Per contra, opposing the appeal, the learned counsel for second respondent/insurance company, firstly argued that the compensation for loss of salary, medical and others expenses granted by the Tribunal under different heads is just and reasonable and hence there is no need to revise the same.

(b) Secondly, he argued that though he claimed to suffer 20% of disability, he did not produce any cogent evidence in this regard and therefore, the Tribunal rightly rejected his claim and there is no need to re-consider his request.

The learned counsel, thus, prayed for dismissal of 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 APSRTC Bus bearing No. AP 10-Z-3113 and the lorry bearing No. ATT 3330 and the claimant suffering fracture to his right leg are not in dispute. Ex.A.5--Medical Certificate issued by Siddhartha Hospital, Siddipet and Ex.A.6—Discharge Summary issued by NIMS would show that the claimant suffered comminuted fracture of both bones of right leg. The claimant took treatment initially in Government Hospital, Kurnool and later he was shifted to Siddhartha Hospital and thereafter he was shifted to RTC Hospital at Taranaka and later he was referred to NIMS Hospital, Hyderabad. His claim is that he was bed-ridden for a period of 2 years

and that he took treatment in several hospitals by spending huge expenditure. On these pleas, he claimed compensation of Rs.2, 00,000/- . The claimant is said to have been working as Security Guard in RTC.

9 a) The first contention of the learned counsel for appellant is concerned, the claimant produced Ex.A.3---Statement showing the loss of salary suffered by him subsequent to his accident, which is issued by APSRTC, Siddipet Depot, where the claimant was working. As per the Statement, from August, 1997 to February, 1999, he suffered a total sum of Rs.75,021/- towards loss of salary. In Para No.15 of the Award, the Tribunal dealt with the issue for loss of pay. The Award would show that the Tribunal though agreed with the loss of pay suffered by him and held that he deserves compensation, however, astonishingly, the Tribunal without giving any cogent reason held that the claimant is entitled to compensation for a maximum period of 52 weeks but not entire period as claimed by him. I am unable to accept the finding of the Tribunal because there is no legal basis for the Tribunal to arrive such a finding to restrict the claim for 52 weeks when at one hand the Tribunal accepted the claim of the petitioner. Therefore, the compensation for loss of salary is enhanced to Rs.75,021/-.

b) Sofaras the second argument of the learned counsel for appellant with regard to medical and other incidental expenses is concerned, I do not find much force in it since the Tribunal has awarded the compensation under different heads in a reasonable manner.

(c) Sofaras the 3rd contention is concerned, according to the claimant, he suffered 20% disability. PW.3—Orthopedic Surgeon, NIMS, Hyderabad, deposed that due to fracture of the bones, the claimant suffered Hypertrophied non-union of fracture right tibia in the lower 1/3rd, for which he was operated in NIMS, Hyderabad, on 21.09.1998 by putting rings and wires in his leg and he was discharged on 01-10-1998. PW.3 further stated that the claimant was again admitted on 10-10-1998 for

infection of wire site and he was discharged on 12-10-1998. Again he was admitted on 18-05-1999 and he was operated on 19-05-1999 for removal of appliance. On 20-05-99 he was discharged with a plaster on his leg. Subsequently, he attended for check ups. This doctor then stated that on examination he found stiffness of right ankle in permanent nature, due to which, the claimant suffered 20% of disability and thereby he cannot sit on the ground or use normal toilet like other people and he cannot run or walk with normal speed and there is no operation to correct this disability.

10. Based on the above evidence of PW.3, the claimant, perhaps claimed that he suffered 20% of disability. But, however, the Tribunal in para No.17 of the Award held that it is not the case of the claimant that due to the injuries, he suffered loss of any promotional chances and further he did not produce any disability certificate issued by the Medical Board or any other Medical Officer and he continues to work in the same department. On these grounds, the Tribunal did not accept his physical disability for calculating loss of future earning powers. In my considered view, this finding is only partially correct. It is true that due to disability whatsoever he suffered, the claimant has not lost his job and he is continuing in the same job and there is no acceptable evidence that he lost his promotional chances. Therefore, he does not deserve compensation for the alleged loss of earning power. This is one side of the coin. On the other hand, the claimant had lost certain basic amenities, which is evident from the deposition of PW.3. The claimant cannot do certain basic works like attending toilet and he cannot run or walk with normal speed. So, it is evident that he lost some basic amenities, for which he deserves a reasonable compensation and in such consideration, he is entitled to a sum of Rs.15,000/- for loss of basic amenities. Thus, the claimant is entitled to the compensation under different heads as follows:

Loss of salary	Rs.75,021-00
Pain and Suffering and transport expenses	Rs.25,000-00

Medical Expenses	Rs.15,043-00
Loss of basic amenities	Rs.15,000-00

Total	Rs.1,30,064-00

So, on a conspectus of facts and evidence, the claimant is held entitled to Rs.1,30,064/- as compensation.

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

- a) The compensation is enhanced by Rs.44,021/- with proportionate costs. The enhanced compensation amount shall carry interest at 7.5% p.a from the date of O.P till the date of realization.
- b) The respondents are directed to deposit the compensation amount within one month from the date of this judgment, failing which execution can be taken out against them.
- c) No order as to costs.

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

U.DURGA PRASAD RAO, J

Date: 30.06.2015

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