

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1431 of 2009

JUDGMENT:

Aggrieved by the Award dt:27.10.2006 in M.V.O.P.No.1149 of 2005 passed by the Chairman, M.A.C.T-cum-Principal District Judge, Kurnool (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 18.09.2005 at about 10:45 am, when the claimant was walking towards Srisaila Devasthanam Kalyana Mandapam on the extreme left side of the road, one car bearing No.AP 21 E 8199 came from wrong side i.e, from Nandikotkur side being driven by its driver at high speed and in a rash and negligent manner and dashed the claimant. The claimant fell down and sustained grievous fracture injuries to the right hand and both legs. It is averred that the accident was occurred due to rash and negligent driving by the driver of the offending car. On these pleas, the claimant filed M.V.O.P.No.1149 of 2005 under Sec. 140 and 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent Nos.1 and 2, who are driver-cum-owner and insurer of the offending Car and claimed Rs.4,00,000/- 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 negligence of the claimant himself. R.2 finally contended that the compensation claimed is highly excessive and prayed to dismiss the O.P.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A8 and Ex.X.1 were marked on behalf of claimant. Policy copy filed by 2nd respondent was marked as Ex.B.1.

e) The Tribunal on appreciation of both oral and documentary evidence awarded lumpsum compensation of Rs.1,00,000/- with proportionate costs and interest at 7.5% p.a against respondents.

Hence, the appeal by claimant.

4) Heard arguments of Sri B.Siva Kesava Reddy, learned counsel for appellant/claimant and Sri Bathula Venkateswara 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) Fulminating the award, the main argument of learned counsel for appellant is that the Tribunal erred in awarding lumpsum compensation of Rs.1,00,000/- instead of computing the compensation under different relevant heads and thereby the claimant received inadequate compensation. He thus

prayed to award just and reasonable compensation.

6) Per contra, learned counsel for 2nd respondent/Insurance Company argued that though the Tribunal awarded lumpsum compensation, the same was just and reasonable and in tune with the injuries suffered by the claimant and therefore, there is no need to revise the compensation. 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 car bearing No.AP 21 E 8199 and claimant suffering injuries and consequent disability are not in dispute. The main thrust in the argument of learned counsel for appellant is that the Tribunal erred in awarding lumpsum compensation. I find force in the said argument. The practice of awarding compensation under lumpsum method needs to be deprecated. By dint of this method, most of the times the Tribunals will be failing to award just and reasonable compensation. So the best method is to award compensation under different heads. Hence compensation needs to be revised.

9 a) Ex.A.3—wound certificate coupled with the evidence of PW.2—Ortho Surgeon of Government General Hospital,

Kurnool would show that the claimant had suffered fracture humerus right side, fracture of both bones of right leg and fracture of both bones of left leg in the resultant accident, for which he was treated in the Government General Hospital, Kurnool and plates and screws were fixed in his right humerus. Having regard to the three (3) fractures suffered by him and the excruciating pain he must have experienced at his advanced age of 55 years, the claimant is awarded **Rs.45,000/-** i.e, @ Rs.15,000/- for each grievous injury.

b) As per claimant, he spent about Rs.30,000/- towards medical expenditure and for surgery he spent about Rs.20,000/-. However, the evidence of Doctors is to the effect that free treatment was given to him in the Government General Hospital. Considering the fact that though free treatment will be given in the Government Hospitals, still patients have to incur some medical expenditure for purchasing medicines outside and also considering the fact that they have to incur expenditure for extra nourishment charges and attendant charges, the claimant is awarded **Rs.5,000/-** towards medical and incidental charges.

c) As per the evidence of PW.3—another Ortho Surgeon in Government General Hospital, Kurnool, the claimant suffered 20 to 25% of permanent disability and for removal of the plates, he needs to undergo another operation which may cost him about Rs.10,000/- to Rs.15,000/- even if performed in Government Hospital. Considering it, the claimant is awarded

Rs.15,000/- for the future medical expenditure.

d) As stated earlier, as per the evidence of PW.3, the claimant suffered 20% of permanent disability due to restriction in the movement of left and right shoulders and due to malunion of right and left knees. So he deserves compensation for loss of earning power due to disability. The disability spoken by PW.3 is a physical disability and same has to be converted into functional disability for assessing the compensation. The avocation of the claimant is concerned, initially the claimant stated that by selling Ayurvedic medicines he was earning Rs.3,000/- p.m. However, in the cross-examination he sated that he was not selling Ayurvedic Medicines but he was selling fertilizers by taking them from the shops at Kurnool and selling in the village. So, his avocation needs free movement of the limbs. Therefore, the physical disability certainly will have adverse impact on his earning capacity. Hence his functional disability is assessed at 20%. There is no proper proof for his income. Therefore, his income is taken at Rs.2,500/- p.m. His annual income comes to Rs.30,000/-. Having regard to his age as 55 years, '11' is selected as multiplier basing on the decision of the Apex Court reported in **Smt. Sarla Verma vs. Delhi Transport Corporation**^[1]. Hence, the compensation for loss of earnings due to disability comes to Rs.66,000/-(Rs.30,000/- x 11 x 20%).

Thus the total compensation payable to the claimant

under different heads is detailed as below:

-		
Pain and suffering	for 3 grievous injuries	
<u>Rs.45,000-00</u>		
Medical expenses & other incidental charges		
Rs. 5,000-00		
Future medical expenditure		
Rs.15,000-00		
Loss of earning power due to disability		
Rs.66,000-00		
	Total	Rs.1,31,000-
	00	

So at the outset, the compensation awarded by the Tribunal is enhanced by **Rs.31,000/-** (Rs.1,31,000/- minus Rs.1,00,000/-).

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

- a) The compensation is enhanced by **Rs.31,000/-** with proportionate costs and interest at the rate of 7.5% a.m.
- 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.

U. DURGA PRASAD RAO, J

Date: 29.09.2015

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[\[1\]](#) 2009 ACJ 1298 (SC) = AIR 2009 SC 3104