THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1134 of 2009

JUDGMENT:

In a motor vehicle accident the claimant was injured, his right leg was amputated below knee and in the resultant claim petition—O.P.No.94 of 2004 (Old OP No.478 of 2002) MACT-cum-II Additional District Nalgonda at Suryapet awarded compensation of Rs.4,11,000/- as follows:

Pain and suffering Rs. 5,000-00

Medical expenditure Rs. 28,000-00

Loss future income Rs.3,60,000-00

Loss of past income

for six months Rs. 18,000-00

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Total Rs.4,11,000-00

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2) The Tribunal directed the respondents 1 and 2 who are the owner and insurer of the crime tractor to pay the compensation.

3) Challenging the adequacy of compensation the claimant filed the instant appeal.

4) Heard arguments of Sri Kiran Pilakurthi, learned counsel for appellant/claimant and Sri T.Mahender Rao, learned counsel for R2—Insurance Company. Though notice was served on R1/owner there is no representation on his behalf.

5) Fulminating the award, learned counsel for appellant/claimant firstly argued that prior to accident the claimant was running business under the name and style Mythri Seeds and Pesticides and earning Rs.10,000/- per month and he was an income tax assessee vide as per Ex.A10—Income Tax returns and despite the same, the lower

Tribunal fixed his annual income grossly at a low figure of Rs.40,000/- and thereby compensation for loss of past and future earnings was drastically reduced. Further, the Tribunal failed to observe that though physical disability certified as per Ex.A7— disability certificate is 60%, but his functional disability is 100% because he cannot now run his pesticide shop and in fact he closed his shop subsequent to the accident and lost his earnings totally. The Tribunal therefore, ought to have taken the disability at 100% for computation of compensation.

b) Secondly, he argued that the Tribunal failed to award compensation for loss of amenities due to disability and it also failed to award compensation for extra-nourishment and attendant charges. He thus prayed to allow the appeal and enhance the compensation suitably.

6a) Per contra, while opposing the appeal, learned counsel for R2/Insurance Company argued that the Tribunal rightly took the disability at full extent of 60% as certified in Ex.A7 because in spite of amputation of right leg below knee the claimant can conduct pesticide business as usual by engaging an assistant and therefore, it cannot be said that he has totally lost his earnings. He has not produced any evidence that he closed his business.

b) Nextly, he argued the Tribunal rightly fixed the annual income of the claimant at Rs.40,000/-. He further argued that compensation awarded under other heads is also just and reasonable and there is no need to revise the same. He thus prayed to dismiss the appeal.

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?"

8a) **<u>POINT</u>**: Accident, involvement of tractor and claimant suffering amputation of right leg below knee are admitted facts. The bone of contention is quantum of compensation. The first argument on behalf of claimant is that the Tribunal erred in fixing the annual income of the claimant at Rs.40,000/-. A perusal of the record particularly Ex.A10—

Income tax return of the claimant would show that he was doing business under the name and style Mythri Seeds and Pesticides at Suryapet. His gross income was shown for the assessment years 1999-2000; 2000-2001 and 2001-2002 at Rs.72,580/- Rs.68,380/- and Rs.70,800/-. From these returns the net average annual income at the modest level can be taken as Rs.60,000/-

b) Then coming to disability, no doubt Ex.A7—disability certificate shows that the claimant suffered 60% permanent disability due to amputation of right leg below knee. However, it must be noted that it is a physical disability and for computation of compensation, the Court has to fix the functional disability taking into consideration the nature of avocation prior to the accident. As stated earlier, claimant was doing seeds and pesticides business prior to the accident. Though he claimed that he stopped the business after the accident however, he has not produced any reliable evidence to that effect. Even otherwise, despite physical disability the claimant can continue his business by engaging an assistant. Therefore, in terms of functional disability, it cannot be said that he has totally lost his earning capacity. Therefore, his functional disability is fixed at 50%. Thus, the loss of future income due to 50% functional disability comes to Rs.**4,50,000/-** (Rs.60,000 x 15 x 50%)

c) Similarly the loss of past earning for six months is also revised from Rs.18,000/- to **30,000**/- since his annual income is accepted as Rs.60,000/-

d) The next contention of the claimant is that the Tribunal failed to award any compensation for loss of amenities. I find some force in this argument. Due to amputation of leg below knee claimant cannot attend day today pursuits on his own and he has to depend on some others. Further, he cannot have free walk, run and climb steps like other people. Therefore, it is evident that he lost certain basic amenities in life. Considering it, he is awarded Rs.**20,000**/-.

e) Then, the next argument of claimant is that the Tribunal failed to award compensation for attendant and extra-nourishment charges.

Considering the possibility that during the hospitalization, the claimant must have required the assistance of attendant and also good nourishment to recoup his health, he is awarded Rs.**5,000**/- in this regard.

Thus, the total compensation payable to the claimant under different heads is as follows:

Pain and suffering Rs. 5,000-00

Medical expenditure Rs. 28,000-00

Loss future income Rs.4,50,000-00

Loss of past income

for six months Rs. 30,000-00

Loss of basic amenities Rs. 20,000-00

Attendant and

extra-nourishment charges Rs. 5,000-00

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Total Rs.5,38,000-00

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Thus, the compensation payable to the claimant is enhanced by Rs.**1,27,000/-.**

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

i. Compensation is enhanced by Rs.**1,27,000**/- with costs.

ii. The enhanced compensation shall carry interest at **7.5%** per annum from the date of OP till the date of realization, whereas the original compensation of Rs.4,11,000/- shall carry interest at 9% p.a. from the date of OP till realisation.

iii. No costs in the appeal.

U.DURGA PRASAD RAO, J

Date: 05.10.2015

Murthy