

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.886 of 2009

JUDGMENT:

Aggrieved by the Award dt. 09.02.2009 in O.P.No.389 of 2007 passed by the Chairman, MACT-cum-V Additional District Judge, Anantapur (for short "the Tribunal), the claimant preferred the instant appeal.

2 a) The factual matrix of the case is thus:

On 20.11.2006 at about 7.15 pm while the claimant in returning to Anantapur in his auto and reached near Bukkarayasamudram bus stop, a bus bearing No. AP 02 U 1935, belonging to R.1, being driven by its driver in a rash and negligent manner dashed against the auto. In the resultant accident, the claimant received multiple and grievous injuries. He was shifted to Government General Hospital, Anantapur, for treatment and there from, he was shifted to Mythri Hospital for better treatment, where he underwent for surgery. The auto of the claimant was also partially damaged in the said accident. It is averred that bus driver was responsible for the accident. On these averments, the claimant filed O.P.No.389 of 2007 under Section 163-A of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos. 1 and 2, who are the owner and insurer of the bus and claimed Rs.1,50,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2/Insurance Company filed Counter denying all material averments made in the petition and urged to put the claimant in strict proof of the same. It contended that there is no negligence on the part of the driver of the bus and the claimant himself drove the vehicle in a rash and negligent manner and caused the accident. R.2 further contended that the compensation claimed is excessive and

thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 4 were examined and Exs.A1 to A14 and X.1 to X.3 were marked on behalf of the claimant. No oral or documentary evidence was adduced on behalf of respondents.

e) The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.60,000/- with costs and interest at 7.5% p.a under different heads as follows:

Transport Charges	Rs.1,000-00
Medical Expenses	Rs.8,000-00
Extra Nourishment	Rs. 3,000-00
Medical Attendant Charges	Rs.1,000-00
Pain and suffering	Rs.5,000-00
Towards Mental agony	Rs.5,000-00
For grievous injury	RS.15,000-00
For 4 simple injuries	Rs.8,000-00
Loss of earnings	Rs.8,000-00
Damages of the auto	Rs.6,000-00

Total	Rs.60,000-00

Hence, the appeal by the claimant.

3) Heard arguments of Sri P. Narasimhulu, learned counsel for appellant/Claimant and Sri Kota Subba Rao, learned counsel for respondent No.2. Notice sent to R1 was returned unserved.

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

5 a) Fulminating the Award, learned counsel appellant/claimant firstly argued that so far as the compensation for the injuries is concerned,

in some respects, the Tribunal awarded a very low amount as the Tribunal awarded only Rs.8000/- towards medical expenses though the claimant incurred a total medical expenditure of Rs.15,000/- for undergoing surgery in a private hospital by taking in-patient treatment for about 5 to 6 days. So also, the Tribunal awarded a low amount towards pain and suffering.

b) Secondly, learned counsel argued that the Tribunal awarded a low compensation towards auto repairing charges. He argued that PW.2 clearly deposed that he repaired the damaged auto of the claimant in his garage and he also gave the particulars of the auto parts and repairing charges, totaling more than Rs.20,000/- but the Tribunal erroneously awarded only Rs.6,000/-. He, thus, prayed to allow the appeal and re-assess the compensation suitably.

6 a) Per contra, learned counsel for respondent/Insurance Company argued that the compensation awarded under different heads was just and reasonable and there is no need to interfere with the same. Learned counsel argued that the claimant suffered fracture to his right thigh bone, for which, he took treatment in the hospital of PW.3 for about 5 days and he did not suffer any disability and having regard to the nature of injury and treatment, the Tribunal rightly awarded Rs.54,000/- towards pain and suffering, medical expenditure, loss of earnings etc., which is just and reasonable by all means.

b) Similarly, for the damage to the auto also, the Tribunal awarded a reasonable amount of Rs.6000/-. Learned counsel vehemently argued that though the claimant examined PW.2—Garage Owner, he has not given the particulars of the parts which were damaged in the accident and the parts he replaced with new ones and their costs etc. The Tribunal observed that the claimant did not obtain a Surveyor Report showing the extent of the damage caused to his vehicle so as to lend strength to the evidence of PW.2. In spite of all these defects in the claimant's case, he argued, the Tribunal awarded a reasonable amount of Rs.6,000/-, which is a reasonable one. 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 under different heads is just and reasonable or needs interference?”

8) **POINT:** Accident, involvement of Auto bearing No.AP 02 U 1005 of the claimant and the bus bearing No. AP 02 U 1935 and injuries to the claimant and damage to the auto are not in dispute. The main issue in this appeal is about the adequacy of compensation. The claimant suffered fracture to his right femur besides other simple injuries, for which, he took treatment in Government Hospital, Anantapur from 20.11.2006 to 27.11.2006, which is manifest from the evidence of PW.3—the Assistant Professor in Government Hospital, Anantapur and later in Mythri Hospital from 27.11.2006 to 1.12.2006, as per the evidence of PW.4—Dr. K. Satish of Mythri Hospital. The claimant was operated upon by stabilizing the femur with inter locking nail. This is precisely the nature of injuries and the treatment underwent by him. In the evidence of PWs. 3 and 4, we find no disability suffered by the claimant.

9) Coming to compensation, the Tribunal awarded amounts under different heads, totalling Rs.60,000/- as mentioned supra. On a careful perusal, in my considered view, the compensation awarded under few heads needs re-consideration.

10) The Tribunal awarded Rs.8000/- towards medical expenditure. However, the medical bills show a different amount. Ex.A.8—Hospital Charges Bill shows that the claimant spent about Rs.10,850/- towards hospital charges. Besides, Ex.A.9 to A.12—Medical Bills would show that the claimant purchased medicine under those cash bills. So, Exs.A.8 to A.12 would show that the claimant incurred about Rs.14,000/- to Rs.15,000/- towards medical expenditure. However, the Tribunal awarded only Rs.8,000/-. Having regard to the fact that the claimant suffered fracture to his right femur and he underwent surgery and in-patient treatment for about 5 days in a private hospital, a total medical expenditure of Rs.15,000/- can by no means, be said as high amount. Hence, the medical expenditure is revised to Rs.15,000/-.

11) Then damage to the auto is concerned, PW.2 deposed that the claimant got repaired his auto in his garage i.e., Ashraf Auto Gaurage, Anantapur. He further deposed that he attended the mechanical works and repaired the auto by collecting Rs.20,200/-. The claimant produced Ex.A.13—Auto Spare Parts Bill for a sum of Rs.20,200/- and Ex.A.14—Receipt for Repairing Charges issued by PW.2 for Rs.7,900/-. The Tribunal noticed that the claimant has not obtained M.V. Inspector’s Report or Surveyor’s Report to explain the nature and extent of the damage caused to the auto and spare parts that were required to be replaced or repaired. Hence, it awarded only Rs.6,000/-. In my view, this amount is on low side. Even Ex.A.14 is taken into consideration, PW.2 charged Rs.7,900/- for Painting and Tinkering and other repairing works like welding etc. This amount cannot be said to be on high side. Added to it, the claimant must have purchased some important spare parts which now a days would easily cost Rs.5,000/- to Rs.6,000/-. So, in my considered view, a total sum of Rs.14,000/- will be a reasonable amount for repairing charges of the auto and hence, the same is awarded. Thus, the total compensation payable to the claimant under different heads is as follows:

Transport Charges	Rs. 1,000-00
Medical Expenses	Rs. 15,000-00
Extra Nourishment	Rs. 3,000-00
Medical Attendant Charges	Rs. 1,000-00
Pain and suffering	Rs. 5,000-00
Towards Mental agony	Rs. 5,000-00
For grievous injury	Rs. 15,000-00
For 4 simple injuries	Rs. 8,000-00
Loss of earnings	Rs. 8,000-00
Towards damages of the auto	Rs. 14,000-00

Total	Rs. 75,000-00

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

- i. Compensation is enhanced by Rs.**15,000/-** with proportionate costs and interest at 7.5 p.a., from the date of OP till the date of realisation.
- ii. The Respondents in the OP 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: 12.10. 2015

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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.886 of 2009

Dt. 12 /10/2015

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