

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

MACMA No.945 of 2009

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MACMA No.932 of 2012

COMMON JUDGMENT:

1 Aggrieved by the judgment and award dated 04.06.2008 passed in MVOP No.2639 of 2006 on the file of the V Additional Metropolitan Sessions Judge (Mahila Court)-cum-XIX Additional Chief Judge, City Criminal Courts at Hyderabad, wherein and whereby an amount of Rs.2,35,800/- was awarded as compensation to the petitioner by fastening the liability in the ratio of 90 : 10 on the respondent Nos.1 and 2, the second respondent – insurer of the crime vehicle filed MACMA No.945 of 2009 and the first respondent – owner of the crime vehicle filed MACMA No.932 of 2012.

2 Since these two appeals arise out of the very same judgment and award passed in the above said O.P, they are being disposed of by this common judgment.

3 For the sake of convenience, the parties to this appeal are hereinafter referred to as they were arrayed in the O.P.

4 The facts leading to the filing of the present appeal are briefly as follows:

5 On 17.10.2006 one Konireddy Ramesh i.e. the petitioner herein along with others boarded an auto at Konda Mallepalli in order to go to Devarakonda. When the auto reached culvert No.113/2, at the outskirts of Devarakonda, the driver of the lorry bearing No.AP 10 V 1715 drove the same in a rash and negligent manner and dashed against the auto from opposite direction. The accident occurred due to the rash and negligent driving of the driver of the offending lorry. In connection with the said accident, the Station House Officer, Devarakonda police station registered a case in Cr.No.302 of 2006 under Section 337 of IPC against the driver of the lorry. Due to the accident the petitioner sustained fracture and multiple injuries all over the body. The petitioner took treatment as inpatient for a long time and spent huge amount towards medicines and treatment. Due to the accident, the petitioner sustained

disability, thereby lost his future income. The lorry bearing No.AP 10 V 1715, which belongs to the first respondent was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2.00 lakhs to the petitioner.

6 First respondent filed counter denying the averments made in the petition, inter *alia* contending that the accident occurred due to the rash and negligent driving of the driver of the auto and that there was no negligence on the part of the driver of the lorry. The lorry bearing No.AP 10 V 1715 belongs to this respondent was insured with the second respondent with effect from 13.03.2006 to 12.03.2006. Therefore, this respondent is not liable to pay compensation of Rs.2.00 lakhs to the petitioner.

7 Second respondent-insurer filed counter denying the averments made in the petition, inter *alia* contending that the accident occurred due to the rash and negligent driving on the part of the driver of the auto and that there was no negligence on the part of the driver of the lorry. This respondent is not liable to pay compensation to the petitioner unless the petitioner proves that the driver of the lorry was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence the petition may be dismissed so far as this respondent is concerned.

8 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident took place on 17.10.2006 at about 12.00 noon due to rash and negligent driving of Tanker bearing No. AP 10 V 1715 by its driver?
- ii. Whether the petitioner is entitled to claim compensation from the respondents, if so, to what amount and from whom?
- iii. To what relief?

9 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.10 were marked. On behalf of the second respondent R.W.1 was examined and Ex.B.1 was marked.

10 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred

due to the rash and negligent driving of the driver of the lorry bearing No.AP 10 V 1715 and the driver of the auto in the ratio of 90% : 10% and allowed the petition in part by awarding compensation of Rs.2,35,800/- with interest at 7% p.a. from the date of filing of the petition till the date of deposit and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner as well as the insurer of the lorry filed these two appeals.

11 Heard Sri K. Jagadeshwar Reddy the learned counsel for the petitioner and Sri AVKS Prasad, the learned counsel for the second respondent.

12 The contention of the learned counsel for the petitioner is three fold.

i. The Tribunal has not rightly considered various medical bills filed by the petitioner.

ii. The Tribunal awarded meager amount of compensation under non-conventional heads.

iii. The Tribunal has not awarded just and reasonable compensation.

13 *Per contra*, the learned counsel for the second respondent submitted that the Tribunal failed to consider that the accident occurred due to rash and negligence on the part of the driver of the lorry and the driver of the auto in the ratio of 50% : 50%. He further submitted that the Tribunal has no right whatsoever to award compensation more than the amount claimed by the claimant. He further submitted that the amount of compensation awarded by the Tribunal under various heads is highly excessive and exorbitant.

14 Now the points that emerge for consideration in these appeals are:

1. Whether the driver of the auto was also equally responsible to cause the accident?
2. Whether the Tribunal has awarded just and reasonable compensation or not?

15 Along with the appeal, the petitioner filed MACMA MP No.2183 of 2012 to permit the petitioner to amend the petition in order to claim compensation of Rs.4.00 lakhs instead of Rs.2.00 lakhs.

POINT No.1:

16 In order to prove the manner of accident, the petitioner examined himself as

P.W.1 and got marked Exs.A.1 and A.2. To demolish the case of the petitioner, an employee of the second respondent was examined as R.W.1. The fact remains that R.W.1 is not an eyewitness to the accident. If the testimony of P.W.1 is taken into consideration, the accident occurred due to the rash and negligent driving of the driver of the lorry. In the cross examination of P.W.1 nothing is elicited to shake his testimony so far as the manner of accident and the negligence on the part of the driver of the lorry are concerned. As per the recitals of Ex.A.1-First Information Report and Ex.A.2-Charge sheet, the accident occurred only due to the rash and negligent driving of the driver of the lorry. If really the accident occurred due to the negligence or contributory negligence on the part of the driver of the auto, what prevented the driver of the lorry to lodge a complaint to that effect? The second respondent did not examine the driver of the lorry or any other eyewitness to the accident to prove that the driver of the auto also contributed to cause the accident to the extent of 50%. The oral testimony of R.W.1 is not supported by any documentary evidence. R.W.1 being an employee of the second respondent, the possibility of distortion of facts in order to absolve the liability of the second respondent cannot be ruled out completely. Viewed from any angle, much weight cannot be attached to the testimony of R.W.1 so far as the manner of accident and negligence on the part of the driver of the lorry are concerned. The oral testimony of P.W.1 inspires confidence of the Court. At the time of accident, more than six persons were travelling in the auto. In that view of the matter, the possibility of negligence on the part of the driver of the auto also cannot be ruled out completely. The Tribunal has assigned cogent and valid reasons to its findings on issue No.1. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. The second respondent filed MACMA No.175 of 2009 challenging the judgment and award passed in the O.P. and this Court dismissed the same on 21.01.2014, confirming the findings recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, there are no grounds much less valid grounds to interfere with the well considered findings recorded by the Tribunal on issue No.1. The point is answered accordingly.

17 A perusal of the record reveals that the petitioner filed the petition seeking compensation of Rs.2.00 lakhs. The Tribunal awarded Rs.2,35,800/- The

claimant filed MACMA No.932 of 2012 claiming compensation of Rs.4.00 lakhs. There is no much dispute with regard to the nature of injuries sustained by the petitioner. As per the testimony of P.W.1, he was mason by profession. Taking into consideration the nature of profession of the petitioner, the Tribunal rightly arrived at a conclusion that the petitioner may earn Rs.3,000/- p.m. The oral testimony of P.W.1 reveals that he incurred 30% disability. The oral testimony of P.W.2 coupled with Ex.A.6 disability certificate reveals that the petitioner incurred 30% disability. The petitioner required lot of stamina to discharge his duties as mason. No one will engage a person to attend the mason work with some sort of disability. Undoubtedly, the disability incurred by the petitioner will effect the earning capacity of the petitioner, if not 30%, at least to certain extent. By placing reliance on the oral testimony of P.W.1 and Ex.A.6, the Tribunal arrived at a conclusion that the loss of future earnings of the petitioner is 30%. The appropriate multiplier to be adopted for the age of 22 years is 17 as per the second schedule to the M.V. Act. The loss of future earnings of the petitioner comes to Rs.1,83,600/- (Rs.3,000 X 12 X 17 X 30/100).

18 Taking into consideration the nature of fracture sustained by the petitioner, the Tribunal awarded an amount of Rs.28,885/- and Rs.8,000/- respectively towards medicines, basing on Ex.A.5 and Ex.A.8 medical bills. The Tribunal also awarded an amount of Rs.5,000/- towards incidental expenses and Rs.20,000/- towards pain and suffering.

19 A perusal of the record reveals that the Tribunal has considered various aspects and awarded just and reasonable compensation. Therefore, I am unable to acceded to the contention of the learned counsel for the petitioner that the compensation awarded by the Tribunal under various heads is too meager. I am also unable to acceded to the contention of the learned counsel for the second respondent that the compensation awarded by the Tribunal is on higher side.

20 A perusal of the record reveals that the claimant filed the petition claiming compensation of Rs.2.00 lakhs by paying court fee to that extent. The Tribunal awarded Rs.2,35,800/-. But, it seems that the Tribunal has not directed the petitioner to pay Court fee on the enhanced amount of compensation of

Rs.35,800/-. Therefore, the Tribunal is directed to collect court fee on the enhanced compensation of Rs.35,800/- from the petitioner.

21 Accordingly, both the appeals are dismissed. No order as to costs. As a sequel, the miscellaneous petitions, pending in these appeals, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 9th April, 2015.

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