

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD

RAO

M.A.C.M.A. No.1096 of 2009

JUDGMENT:

Aggrieved by the Award dt. 28.01.2009 in M.VO.P.No.347 of 2006 passed by the Chairman, MACT-cum-IV Additional District Judge, Tirupathi (for short "the Tribunal), the claimant preferred the instant appeal.

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

On 8.1.2006 at about 3.45 PM when the claimant was proceeding on motor cycle Yamaha bearing No. RX 135 as a pillion rider and when she reached near Poornakumbam Circle, Tirupathi at about 3.45 pm, a RTC bus bearing No. AP 10 Z 9277 being driven by its driver in a rash and negligent manner came behind and dashed the motor cycle of the claimant and thereby, claimant and her brother fell down and the front left side wheel of the bus ran over the legs of the claimant. In the resultant accident, the claimant received multiple and grievous injuries. Thereafter, she was shifted to SVRR Hospital, Tirupathi, for treatment and there from, she was shifted to Appollo Hospital, Chennai, for better treatment where she underwent surgery to her right thigh. It is averred that she spent Rs.5,00,000/- towards medical expenditure. It is further averred that bus driver was responsible for the accident. On these averments, the claimant filed M.V.O.P.No.347 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against

respondent/APSRTC and claimed Rs.12,00,000/- as compensation under different heads mentioned in OP.

b) Respondent/APSRTC 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 herself drove the vehicle in a rash and negligent manner and caused accident. It is further contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A24 and Ex.C.1 were marked on behalf of the claimant. On behalf of respondent, Rw.1 was examined and no documents were marked.

e) The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.5,11,000/- with costs and interest at 7.5% p.a under different heads as follows:

Loss of earning Power due to	
Permanent disability	Rs. 96,000-00
Marriage Prospects	Rs. 25,000-00
Pain and suffering	Rs. 30,000-00
Extra diet & attendant charges	Rs. 15,000-00
Transport Charges	Rs. 5,000-00
Medicines & treatment	Rs.3,40,000-00

Total	Rs.5,11,000-00

Hence, the appeal by the claimant.

3) Heard arguments of Sri V. Atchuta Ram, learned counsel for appellant/Claimant and Sri A. Ramarao, learned counsel for respondent.

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

5) Challenging the compensation awarded as inadequate, learned counsel for appellant/claimant argued that the Tribunal awarded a low amount of Rs.3,40,000/- towards medical expenditure though the claimant spent in all Rs.5,00,000/- for her treatment. He further submitted that the Tribunal, while granting compensation for loss of earning power due to 40% disability, took notional income of the claimant as Rs.15,000/- per annum, which is a low amount. He submitted that the claimant was studying first year M.B.B.S at the time of accident and considering her future earning potentiality, the Tribunal ought to have taken at least Rs.30,000/- per annum and ought to have computed compensation. He further submitted that the Tribunal ought to have selected '18' as multiplier instead of '16' following the decision of the Hon'ble Apex Court in **Smt. Sarla Varma vs. Delhi Transport Corporation**^[1]. He, thus, prayed to allow the appeal and enhance the compensation suitably.

6) Per contra, while supporting the award, learned counsel for respondent/APSRTC firstly argued that insofar as medical expenditure is concerned, the Tribunal considering Exs. A.7 and A.9 and In-patient Bill dated

17.12.2007 for Rs.52,655/- awarded a total medical expenditure of Rs.3,40,000/- and in that context, the Tribunal rightly observed that in respect of other medical bills filed by the claimant, no one was examined to prove them. Hence, the medical expenditure allowed by the Tribunal was perfectly right.

b) Secondly, learned counsel argued that the compensation of Rs.96,000/- for loss of earning power due to disability, granted by the Tribunal was also reasonable because at the time of accident the claimant was studying first year M.B.B.S and hence, she was not an earning member by then and therefore, the Tribunal rightly took her notional income as Rs.15,000/- per annum and computed the compensation. He, thus, submitted that the compensation awarded under different heads was just and reasonable and there is no need to review the same. Thus, he prayed for dismissal of 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 re-assessment?”

8) **POINT:** As can be seen from the medical record particularly Ex.A.3—Wound Certificate issued by SVRR Hospital, Triupathi, Ex.A.5—First Discharge Summary dt. 28.01.2006 and EX.A.19—Second Discharge Summary, dt.

17.12.2007 and Ex. A.23-Third Discharge Summary, dt. 26.05.2008 issued by the Appollo Hospital, Chennai, coupled with the oral evidence of PW.1 and PW.2-Dr. Ajit Yadav, the claimant suffered fracture of middle shaft of right femur and fracture to both pelvic rami, for which, initially she was treated in SVRR Hospital, Tirupathi and later in different spells at Appollo Hospital, Chennai. As per Ex.A.5—First Discharge Summary, the claimant took treatment from 09.01.2006 to 28.01.2006 in the first spell in Appollo Hospital, Chennai when inter locking was done to her right thigh with nails and screws. Then Ex.A.19-Second Discharge Summary, shows that in the second spell, the claimant took treatment between 14.12.2007 and 17.12.2007 in the Appollo Hospital, Chennai when at the time Tissue Expander insertion was done to her right thigh. Then Ex.A.23—Third Discharge Summary shows that in the 3rd spell, the claimant took treatment from 23.05.2008 to 26.06.2008 and at that time the doctors at Appollo Hospital removed the nails from her thigh by performing operation on 25.05.2008 and they have also done plastic surgery for contour deformity. The above is precisely the evidence regarding the injuries and treatment underwent by the claimant.

9) It is claimed that she incurred a total medical expenditure of about Rs.5,00,000/-. She produced medical bills covered by different exhibits. The lower Tribunal considered only Exs. A.7 and 9 and In-patient Bill

dt.17.12.2007, but did not consider the other medical bills holding that they were not properly proved by examining the concerned. It is the contention of the learned counsel for claimant that Ex.A.24—Bunch of Medical Bills and other bills relating to incidental expenditure, which amounts to Rs.2,12,661/-, was not properly appreciated and erroneously rejected by the Tribunal. According to the claimant, if these bills are also taken into consideration, the total medical expenditure would come to Rs.5,00,000/-. I have gone through all the medical bills including Ex.A.24—Bills. Ex.A.24 is concerned, the evidence of Pw.2 is that some of the bills were issued by their hospital, but some were foreign bills. Probably, in view of this evidence, the Tribunal took only one in-patient bill of Rs.52,655/- from out of bunch of bills in Ex.A.24 and held that in respect of other bills, there was no proper proof. Ex.A.24 consists of the bills of not only Appollo Hospital and Pharmacy but also few other medical shops and it also contains train tickets and receipts issued by the travelling agents. The claimant has not examined the persons concerning to those travelling agencies. It is true that it will be difficult for claimant to examine each and every agency who issued a particular bill. Therefore, having regard to the nature of injuries, length of treatment and other probabilities, a reasonable amount has to be awarded as compensation. In such consideration, the medical expenditure is enhanced from Rs.3,40,000/- to Rs.3,90,000/-.

10. So far as the compensation for loss of earning power is concerned, the Tribunal, as already stated supra, took notional income of the claimant as Rs.15,000/- and multiplied the same with multiplier '16' and limited the total to 40% since the disability is 40%. The contention of the learned counsel for appellant is that the Tribunal ought to have taken notional income at least as Rs.30,000/- per annum. I am afraid, this argument is not correct. The claimant was only a student by then and the disability by then was not a permanent one since by the date of Ex.C.1, the implants were not removed and her physical condition was not finalized. So, the Tribunal has rightly fixed her notional income as Rs.15,000/- and also rightly took her disability as 40%.

11. Multiplier is concerned, the Tribunal applied '16' taking her age as 20 years. However, in **Sarla Varma's** case (1 supra), the Hon'ble Apex Court fixed '18' as multiplier for the persons in the age group of 15 to 20 years. As such, the compensation is re-assessed, which comes to Rs.1,08,000/- (Rs.15,000 x 18 x 40%). Thus, the total compensation payable to the claimant under different heads is as follows:

Loss of earning Power due to	
Permanent disability	Rs.1,08,000-00
Marriage Prospects	Rs. 25,000-00
Pain and suffering	Rs. 30,000-00
Extra diet & attendant charges	Rs. 15,000-00
Transport Charges	Rs. 5,000-

00

Medicines & treatment	Rs.3,90,000-00

Total	Rs.5,73,000-00

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

- (i) Compensation is enhanced by Rs.**62,000/-** with proportionate costs and interest at 7.5 p.a., from the date of OP till the date of realisation.
- (ii) The Respondent is directed to deposit the compensation amount within two months from the date of this judgment, failing which, execution can be taken out against it.

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

U.DURGA PRASAD RAO, J

Date: 13.10.2015
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**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

M.A.C.M.A. No.1096 of 2009

Dt. /10/2015

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[\[1\]](#) 2009 ACJ 1298 (SC)