

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

M.A.C.M.A. No.1492 of 2009

JUDGMENT:

Dissatisfied with the Award dated 01.07.2008 in O.P.No.1427 of 2004 passed by the Chairman, M.A.C.T-cum-II Additional Chief Judge, City Civil Court at Hyderabad, the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 26.02.2005 while he was sleeping before the office of 'Bindu Saria Metal Box Company' along with his cleaner after unloading the goods from his lorry bearing No. AP 5T 898 and during mid night of 26.02.2004, a lorry bearing No. AP 12 T 5779 being driven by its driver in a rash and negligent manner ran over the sleeping cleaner and the claimant. In the resultant accident, the cleaner was crushed to death and the claimant sustained fracture injuries. It is averred that the accident was occurred due to the rash and negligent driving of the crime vehicle. On these pleas, the claimant filed O.P.No.1427 of 2004 under Sections 166 and 163-A of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2, who are the owner and insurer of the crime vehicle and claimed Rs.4,00,000/- as compensation.

b) Respondent No.1/owner of the lorry filed counter and denied the petition averments and urged to put the claimant in strict proof of the same. He further stated the lorry was insured

with R2—Insurance Company and it has to indemnify the liability of R1, if any. He further contended that claim is highly excessive and exorbitant and thus prayed for dismissal of OP.

c) Respondent No.2—Insurer of lorry filed counter and opposed the petition contending that accident was occurred due to fault of the claimant himself. It is averred that R1 was not having valid and effective driving licence at the time of accident and prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A12 were marked on behalf of claimant. Policy copy produced by R.2 was marked as Ex.B.1 on behalf of respondents.

e) On appreciation of both oral and documentary evidence the Tribunal awarded total compensation of Rs.1,85,000/- with costs and interest at 7.5% p.a. against respondent Nos.1 and 2.

Hence, the appeal.

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

4) Heard arguments of Sri T.D. Phani Kumar, learned counsel for appellant/ claimant and Sri R. Venkat Rao, learned counsel for respondent No.2 /Insurance Company. Notice sent to R.1 was not yet returned.

5 a) Learned counsel for appellant vehemently contended that though PW.2 in his evidence clearly deposed that the

claimant suffered 45% of permanent disability and thereby he cannot sit, squat, stand and walk normally and cannot work as driver, the Tribunal instead of calculating the compensation for loss of income due to disability under multiplier system, has granted a lump sum compensation of Rs.50,000/-, which is unjust. He argued that the Tribunal ought to have calculated compensation by applying multiplier system.

b) Secondly, he argued that though the claimant produced medical bills under Ex.A.10, which cover an amount of Rs.43,684-25 ps, the Tribunal awarded only Rs.5,000/-, which is a meager amount.

6) Per contra, while supporting the Award, the learned counsel for respondent/insurance company submitted that the claimant was treated in Osmania General Hospital and treatment was provided on free of costs and the claimant has not examined any doctor or filed prescriptions in support of Ex.A.10—Medical Bills and therefore, the Tribunal rightly awarded Rs.5000/- towards medical expenditure. With regard to compensation for disability, the learned counsel argued that PW.2 has not treated the claimant and so the disability spoken by him need not be taken into consideration. However, having regard to the grievous nature of the injuries, the Tribunal on the premise that the claimant must have suffered some functional disability, awarded a lump sum of Rs.50,000/- , which is just by all means and there is no need to review the appeal.

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 the Lorry bearing No.AP 12 T 5779 and injuries to the claimant are not in dispute. As per Ex.A.3—Discharge Summary issued by O.G.H, Hyderabad, the claimant suffered closed acetabular fracture to right side, superior pubic rami fracture to left side, blunt injury to dorso lamber spine, crush chest injury, for which he was treated in O.G.H, Hyderabad from 27.02.2004 to 12.03.2004. Then Pw.2, who is Orthopedic Surgeon and Professor in Gandhi Hospital and who treated the claimant privately, deposed that the claimant approached him on 18.09.2006 and on clinical, radiological and physical examination he found that the claimant suffered from pains of both hips and multiple fractures to pelvis and abnormal movements of chest wall and difficulty in breathing. He obtained Ex.A.12—X-ray, which showed diastasis of pubic symphysis and old fracture left inferior pubic ramur. He stated that after seeing the old x-rays and obtaining Ex.A.12—X-ray, he found that the claimant suffered permanent partial disability of 45% and accordingly issued Ex.A.5—Disability Certificate. Regarding the effect of the disability, PW.2 stated that the claimant is not in a position to sit, squat, stand and walk normally and he cannot work and drive the vehicle. He advised him to carry a stick as support for his whole life time.

This is the documentary and oral evidence regarding the nature of injuries, treatment and disability suffered by the claimant. It is true that PW.2 is not the doctor who originally treated him. However, it should not be lost sight of the fact that he is a qualified Orthopedic Professor in Gandhi Hospital and in his individual capacity he clinically, radiologically and physically examined the claimant and after verifying the old x-rays and obtaining latest x-ray in 2006, he issued the Disability Certificate. The respondent has not challenged his qualification as a doctor to issue the certificate. It is only suggested that he cannot issue disability certificate for judicial purpose, which is rightly denied by PW.2. So, the evidence of PW.2 can be accepted to determine the disability of the claimant. Since the claimant suffered 45% of permanent partial disability, which affects his driving profession, he deserves compensation for loss of earnings. The Tribunal awarded a lump sum of Rs.50,000/- without adopting multiplier system and such an approach cannot be countenanced. Hence, the compensation has to be calculated by applying the multiplier system. Since the claimant was a driver, he would earn at least Rs.2000/- per month during the period of accident. For his age, '13' can be taken as multiplier. So, the loss of earnings due to disability comes to **Rs.1,40,400/-** $(Rs.2,000 \times 12 \times 13 \times 45\%)$

a) It is contended that the Tribunal has awarded a meager amount of Rs.5,000/- towards medical expenditure though the claimant produced Ex.A.10—Medical Bills covering Rs.43,684-25 ps. I am afraid, the claimant does not deserve

the amount covered by Ex.A.10 for the reason that he was treated in O.G.H, Hyderabad, which is a Government Hospital, on free of cost and he did not produce any prescriptions relating to Ex.A.10—Medical Bills and he did not examine the concerned doctor, who prescribed the medicines covered by Ex.A.10—Medical Bills and he also did not examine the Druggist from whom he allegedly purchased the medicines. Therefore, the said claim cannot be accepted. The Tribunal on holistic consideration awarded Rs.5,000/- towards medical expenditure without proof. Thus, the total compensation payable to the claimant under different heads works out thus:

Two fractures @ Rs.30,000/- x 2	Rs.
60,000/-	
Pubic Symphysis diastasis	Rs.
45,000/-	
Loss of earning power due to functional disability	
Rs.1,40,400/-	
Pain and suffering	Rs.
10,000/-	
Loss of amenities of life	Rs.
10,000/-	
Normal medical expenditure without proof of bills	
Rs. 5,000/-	
Towards nutritious food, transport and assistance	
Rs. 5,000/-	

	Total
Rs.2,75,400/-	

Thus, the compensation is enhanced by **Rs.90,400/-**(Rs.2,75,400/- minus Rs.1,85,000/-).

9) In the result, this appeal is partly allowed and ordered as

follows:

- a) Compensation is enhanced by **Rs.90,400/-** with proportionate costs and interest at 7.5% per annum from the date of O.P till the date of realization.
- b) Respondents 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: 18.08.2015

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