

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.3718 of 2009

JUDGMENT:

Challenging the compensation awarded in O.P.No.454 of 2002 dt:18.10.2005 by the Chairman, M.A.C.T-cum-I Additional District Judge, Mahabubnagar (for short “the Tribunal”), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant—Yedula Chennaiah is that on 23.10.2001, after performing pooja in Kurumurthy Swamy Temple he boarded the auto bearing No.AP 22 U 167 to go to his Pedda Gudem Village and at about 4:00pm, when the said auto reached the limits of Ranipet, the driver of the auto drove at high speed and in a rash and negligent manner and applied sudden brakes, due to which, the claimant slipped from the auto and the tyre of the auto ran over his right leg and he sustained fracture. It is averred that the accident was occurred due to rash and negligent driving by the driver of the offending auto. On these averments, the claimant filed O.P.No.454 of 2002 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondents 1 and 2, who are owner and insurer of the offending auto and claimed Rs.1,25,000/- as compensation.

b) Respondent No.1 remained *exparte*.

c) Respondent No.2/Insurance Company filed counter

and denied all the material averments made in the petition. R.2 further denied that the driver of the offending auto had valid and subsisting driving licence to drive the auto at the time of accident. R.2 also denied the age, avocation and income of the claimant. Finally R.2 contended that compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to A.8 were marked on behalf of claimant. Policy copy filed by 2nd respondent was marked as Ex.B.1.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded compensation of Rs.8,000/- with costs and interest @ 7.5% p.a. against respondents 1 and 2 under the different heads as follows:

Pain and suffering	
Rs.5,000-00	
Loss of earnings	Rs.1,000-00
Medical expenses & other incidental expenditure	
Rs.2,000-00	
Total	Rs.8,000-00

Hence, the appeal by claimant.

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

4) Heard arguments of Sri K. Venkatesh Gupta, learned counsel for appellant/claimant and Sri P.Harinath Gupta, learned counsel for respondent No.2/ Insurance Company.

Appeal against R.1/owner of the auto was dismissed for default vide Court Order dt: 04.08.2009. Since R.1 remained *ex parte* and suffered decree before the Tribunal, his absence in this appeal is not a consequence in view of decision reported in ***Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma and others***^[1].

5) Severely criticizing the award as being low and unjust, learned counsel for appellant/claimant vehemently argued that in the resultant accident the claimant suffered shortening of his right leg by about 2 ½ inches which is manifest from Ex.A.7—photos but the Tribunal did not believe the same on some flimsy grounds to the effect that the claimant did not approach the hospital immediately after accident but he took some native treatment and further there was no supporting medical opinion to the X-ray film produced by him etc, rejected his disability. Learned counsel argued that the claimant suffered fracture of both bones of his right leg in the resultant accident but since he was poor and illiterate, he could not immediately admit himself either in Government Hospital or a Private Nursing Home but took native treatment for about five months and when his injuries were not healed, he gave report to police and police referred him to Government Hospital, Wanaparthy for medical opinion and wound certificate and basing on the old record the doctors found him suffered fracture of both bones of his right leg and so he was referred to CMO District Headquarters Hospital, Mahabubnagar for radiological opinion and further

management and after getting treatment for sometime there, he approached PW.2—a Private Doctor, who on examination issued Ex.A.6—medical certificate to the effect that ununited fracture of both bones of right leg with pseudarthrosis of Tibia and shortening of right leg of about 2 ½ inches with varus deformity at right leg and he opined that the claimant suffered 20% disability and inspite of this cogent evidence, the Tribunal did not consider the medical evidence in a proper perspective and awarded only pittance. He thus prayed to allow the appeal and enhance the compensation.

6) Per contra, learned counsel for respondent No.2/Insurnace Company supported the award and 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 auto bearing No.AP 22 U 167 and claimant suffering injuries are all admitted facts. The controversy is about the nature of his injuries and whether they resulted in any disability causing shortening of the right leg of the claimant or not. A perusal of the record shows that the accident was admittedly occurred on 23.10.2001 but the claimant gave report to Police of Kothakota P.S on 24.03.2002 i.e, about five months after accident. His

explanation for delay was that he was innocent and he was unable to walk and he was getting some native treatment and so he could not approach police in time and as the injury was not healed, on the advice of others he gave report. Be that it may, Ex.A.2 would show that the police of Kothakota P.S referred him for medical opinion to Government Hospital, Wanaparthy. Ex.A.2 would further show that basing on the previous Private X-ray Report, the Civil Assistant Surgeon, Wanaparthy could know that the claimant suffered fracture of both bones of right leg. So under Ex.A.3—letter he referred the claimant to the CMO, District Headquarters Hospital, Mahabubnagar for radiological opinion and age of the fracture and for further management. The claimant filed Ex.A.8—X-ray film said to be issued by Sri Balaji X-ray and Clinical Laboratories, Pentlavelli, Mahabubnagar. Except that he could not produce the medical record issued by the Government District Headquarters Hospital, Mahabubnagar. Therefore, it is not known what treatment was provided to him and what opinion was expressed by the Doctors at Government Headquarters Hospital, Mahabubnagar on reference made by the Civil Assistant Surgeon, Wanaparthy. Be that it may, the claimant produced Ex.A.6—medical certificate issued by PW.2—M.J. Vijay Kanth, who is a private Orthopedic Surgeon, Mahabubnagar. PW.2 deposed that on 06.02.2005 he examined PW.1 at his clinic and issued Ex.A.6—certificate. He stated that the claimant suffered ununited fracture of both bones of right leg with pseudarthrosis of Tibia and shortening of

right leg by about 2 ½ inches with varus deformity of right leg. This witness certified that the claimant suffered 20% disability in his right leg. Ex.A.7—photos of the claimant clearly show that the right leg was slightly shortened due to the formation of bow in the middle leg. This is the medical record of the claimant.

9) Be that it may, a perusal of the award shows that the Tribunal did not believe the medical record. However, going by the Ex.A.4—charge sheet whereunder the auto driver was charge sheeted for the offence under Sec.338 IPC, the Tribunal accepted that the claimant suffered fracture of both bones of his right leg and accordingly awarded Rs.8,000/- as stated supra.

10) On a conspectus of the facts and evidence, I am of the view that the Tribunal has not properly appreciated the evidence. The claimant is an innocent person and also an illiterate and so he took native treatment for about 5 months and thereafter he approached the Police and lodged Ex.A.1—FIR. The accident, involvement of the vehicle and claimant suffering injuries were proved to be true to a great extent and that was why the police after investigation laid charge sheet. The respondents could not establish that no accident at all took place and the claimant did not suffer any injuries. In that view of the matter, the Tribunal ought to have given weight to the medical record produced under Exs.A.2 and A.3. These two documents would show that the claimant suffered fracture of both bones of right leg. However, there was no subsequent

record regarding how his injuries were managed but we have the evidence of PW.2—a qualified Orthopedic Surgeon. He clearly stated that the claimant due to non-union of the fractured bones, suffered shortening of his right leg by 2 ½ inches. This evidence is corroborated by Ex.A.7—photo which clearly manifests the shortening of his right leg. Therefore, for disability of 20% of his right leg, the claimant is entitled to compensation. Going by the evidence of PW.2, due to the disability the claimant will have continuous pain and difficulty in squatting, long standing and walking. However, PW.2 has not altogether ruled out the possibility of claimant attending his labour coolie work. So taking the percentage of disability and its effect on his day-to-day activities and earning capacity, I am of the considered view that awarding an amount of **Rs.30,000/-** for loss of future earning power due to disability will meet the ends of justice. Thus the total compensation payable to the claimant is detailed as below:

Pain and suffering	Rs.
5,000-00	
Loss of earnings	Rs. 1,000-
00	
Medical expenses & other incidental expenditure	
Rs. 2,000-00	
Loss of future earning power	Rs.30,000-
00	

Total	Rs.38,000-
00	-----

So the compensation is enhanced by Rs.30,000/-

(Rs.38,000/- minus Rs.8,000/-).

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

- a) Compensation is enhanced by **Rs.30,000/-** 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: 03.07.2015

Note: Issue C.C by Monday.

(b/o)

scs

[\[1\]](#) 2001 (1) ALT 485