

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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M.A.C.M.A.Nos.2120 and 3631 of 2005

Between:

Sateesh Agarwal

....Appellant

and

Shyamraj and others.

....Respondents

JUDGMENT PRONOUNCED ON : 18.12.2015

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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M.A.C.M.A.Nos.2120 and 3631 of 2005

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COMMON JUDGMENT:

These two appeals are being disposed of by this common order as they arise out of the same accident.

M.A.C.M.A.No.2120 of 2005 is filed by the claimant seeking enhancement of the compensation, whereas M.A.C.M.A.No.3631 of 2005 is filed by the insurance company challenging its liability.

O.P.No.590 of 2000 on the file of the Motor Accident Claims Tribunal, Nizamabad, was filed by the claimant claiming a compensation

of Rs.3,00,000/- for the injuries sustained by him in a motor accident that occurred on 12.12.1999 when he was traveling in a Tata Sumo bearing No.AP 25 E 5995. At about 7.30 pm on that day when the vehicle reached Khanapoor Village limits, its driver drove it in a rash and negligent manner, as a result of which the driver lost control and the vehicle turned turtle. In the said accident, the claimant sustained multiple injuries and fractures. He was admitted in the Government Hospital, Nizamabad. Thereafter, he was referred to the Nizam's Institute of Medical Sciences (NIMS) hospital at Hyderabad for further treatment. The owner of the vehicle did not contest the case, but the insurance company filed a counter and contested the case.

The Tribunal framed the following issues:

- “1. Whether the accident was occurred due to rash and negligent driving of the TATA SUMO bearing No.AP-25-E-5995 by its driver?
2. Whether the petitioner is entitled for compensation? If so, to what amount and against which of the respondents?
3. To what relief?”

The claimant examined himself as P.W.1 and he also examined one Dr.T.Narsing Rao as P.W.2. Exs.A1 to A10 were marked. The insurance company got examined the Assistant working in the Nizamabad Branch as R.W.1 and got marked Exs.B1 and B2.

On the basis of the oral and documentary evidence, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the vehicle by its driver.

With regard to the compensation, Ex.A2 – wound certificate, was issued by the Government Hospital and the genuineness of the said certificate was admitted by the insurance company. As per the said certificate, the claimant sustained compound fracture of right leg and fracture of right femur. Besides the same, one simple injury was also

caused to the right knee. Though the claimant filed bills issued by Uday Health Care Hospital and Yashoda Hospital, the same were not accepted by the Tribunal, as none were examined in connection with those bills. However, the bills issued by the NIMS hospital were accepted. The final bill issued by NIMS hospital showed an amount of Rs.38,509/-. The claimant appears to be a businessman, but in the absence of any proof, the said claim was also not accepted. Ultimately, the Tribunal awarded an amount of Rs.10,000/- for the fracture of right femur, Rs.15,000/- for the compound fracture of both bones of right leg and Rs.2,000/- for the simple injury of right knee. The final bill issued by NIMS hospital for an amount of Rs.38,509/- was allowed. An amount of Rs.5,000/- was awarded towards pain and suffering and an amount of Rs.2,500/- towards transportation charges. Thus, in all, an amount of Rs.73,009/- was awarded by award dated 11.03.2005.

The only point raised by the learned Counsel for the appellant in M.A.C.M.A.No.3631 of 2005 is that the claimant was a gratuitous passenger and the policy does not cover the liability.

This Court perused Ex.B1 – policy, which was showed as a comprehensive policy and the premium was paid for nine persons traveling in the vehicle.

In the circumstances, the plea raised by the appellant in M.A.C.M.A.No.3631 of 2005 does not survive and M.A.C.M.A.No.3631 of 2005 is dismissed.

Coming to the point of enhancement of compensation, it is not in dispute that the claimant suffered fracture of right femur, besides one simple injury. The amount of Rs.27,000/- for the injuries is grossly inadequate, and the said amount should be enhanced to Rs.50,000/-. The amount towards final bill issued by the NIMS hospital does not need any enhancement. However, the amount of Rs.5,000/- awarded towards pain and suffering needs enhancement to Rs.20,000/-. Similarly, the

transportation charges of Rs.2,500/- should be enhanced to Rs.5,000/- in view of the distance from the native to the place in Hyderabad, where the claimant took treatment. He took treatment in the hospital from 13.12.1999 to 05.02.2000, for nearly fifty days, and during that period, he must have suffered loss of earnings and somebody must have attended on him. In respect of the said expenses, an amount of Rs.10,000/- can be awarded even assuming that there is no proof of income of the claimant. Thus, the just compensation as arrived by this Court is as follows:

<u>Heads</u>	<u>Award of Tribunal</u> <u>Rs.</u>	<u>Enhancement</u> <u>Rs.</u>
Injuries:		
Fracture of right femur	10,000.00	50,000.00
Compound fracture of both bones of right leg	15,000.00	
Simple injury of right knee	2,000.00	
Medical expenses	38,509.00	38,509.00
Pain and suffering	5,000.00	20,000.00
Transportation charges	2,500.00	5,000.00
Loss of earnings	-	10,000.00
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Total	73,009.00	1,23,509.00
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Accordingly, the award of Rs.73,009/- awarded by the Tribunal by its award dated 11.03.2005 is enhanced to Rs.1,23,509/-. The enhanced amount of compensation shall bear the same rate of interest of 9% per annum from the date of the petition till the date of realization.

M.A.C.M.A.No.2120 of 2005 is, accordingly, partly allowed.

In the result, M.A.C.M.A.No.2120 of 2005 is partly allowed and M.A.C.M.A.No.3631 of 2005 is dismissed. The miscellaneous petitions

pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

18.12.2015
vs