

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

M.A.C.M.A.No.3933 of 2009

JUDGMENT:

Aggrieved by the Award dt:13.07.2009 in M.V.O.P. No.458 of 2007 passed by the Chairman, M.A.C.T-cum-Special Judge for trial of offences under SC/ST (POA) Act-cum-V Addl. District and Sessions Judge, Medak at Sangareddy (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 is that on 09.05.2007, he was travelling in an auto rickshaw bearing No.AP 28 V 6212 from his native village to Jogipet and when the said auto reached near Chintakunta village at about 9:00am, one DCM Van bearing No.AP 23 V 6647 came from opposite direction being driven by its driver at high speed and in a rash and negligent manner and dashed the auto rickshaw. Due to which, the claimant fell down and sustained multiple fractures and other injuries. It is averred that the accident was occurred due to the fault of driver of offending DCM Van. On these pleas, the claimant filed M.V.O.P.No.458 of 2007 under Section 166 of Motor Vehicles Act (for short "M.V.Act") and claimed Rs.4,00,000/- as compensation against respondents 1 and 2 who are owner and insurer of the offending DCM Van.

- b) Respondent No.1 remained ex-parte.
- c) Respondent No.2/Insurance Company filed counter denying all the material averments made in the petition and urged to put the claimant in strict proof of the same. R.2 further denied the involvement of DCM Van bearing No.AP 23 V 6647 and injuries sustained by the claimant in the accident alleged to have been occurred. R.2 also denied the age, avocation and income of the claimant at the time of accident. Finally R.2 contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.
- d) During trial, PWs.1 and 2 were examined and Exs.A1 to A.8 were marked on behalf of claimant. RWs.1 and 2 were examined and Exs.B.1 to B.3 were marked on behalf of respondent No.2.
- e) The Tribunal after considering the both oral and documentary evidence held that driver of the offending DCM Van was responsible for the accident. Compensation is concerned, the Tribunal awarded Rs.1,20,000/- with proportionate costs and interest at 7.5% p.a. under different heads as follows:

Pain and suffering	Rs. 50,000-00
Medical expenses	Rs. 70,000-00

Total:	Rs.1,20,000-00

Hence, the appeal by claimant.

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

4) Heard arguments of Sri Chilumala Pratap Reddy, learned counsel for appellant/ claimant; Sri Y. Joseph, learned counsel for respondent No.1 and Sri V.Krishna Rao, learned counsel for respondent No.2/Insurance Company.

5) Learned counsel for appellant/claimant challenged the compensation on the ground of inadequacy of two main submissions:

a) Firstly, that the claimant suffered about 30 to 40% of permanent disability in his right knee joint which was spoken by PW.2—the treatment doctor but the Tribunal erroneously rejected the said evidence on a lame ground that disability certificate was not produced. He argued that when the doctor who spoke about the disability is a qualified and competent doctor and treated the claimant, there can be no reason to discard his evidence unless the Insurance Company challenges his competency or questions the disability with contra evidence. He thus argued that the claimant deserves compensation for loss of earning power due to disability. He relied upon the decision reported in ***Raj Kumar vs. Ajay Kumar and another***^[1].

b) Secondly, he argued that the Tribunal awarded a low amount of Rs.70,000/- towards medical expenditure inspite of

Ex.A.5—medical bills revealing much higher amount.

He thus prayed to allow the appeal and award just and reasonable compensation.

6) Per contra, learned counsel for 2nd respondent/Insurance Company opposed the appeal and argued that the claimant did not suffer any disability and he failed to produce the disability certificate issued by the medical board the Tribunal rightly refused to consider his alleged disability. He supported the quantum of compensation and 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 is just and reasonable or needs interference?”

8) **POINT**: The accident, involvement of auto bearing No.AP 28 V 6212 and DCM Van bearing No.AP 23 V 6447 and injuries to the claimant are admitted facts. With regard to the nature of injuries, treatment and disability, we have the evidence of PW.2—Dr. Y.S.N.Murthy, Orthopedic Surgeon, Mahaveer Hospital, Hyderabad who treated the claimant. He deposed that the claimant suffered comminuted fracture shaft femur right lower involving knee joint for which he operated the claimant on 10.05.2007 by locking plate and screw fixation and discharged him on 25.05.2007. With regard to the effect of

injuries, PW.2 further stated that there are multiple fractures of right leg with restriction of movement right knee joint and due to the stiffness of the right knee joint, the claimant cannot walk without any aid. He further stated that movement of the knee joint is restricted to the maximum. He also stated that claimant suffered 30 to 40% permanent disability. In the cross-examination he stated that three fractures (multiple fractures) were occurred to the right lower limb. He denied the suggestion that the disability stated by him is excessive and patient has not sustained any disability at all. So a perusal of the evidence of PW.2 would show that he is a competent Orthopedic Surgeon who treated the claimant. According to him due to multiple fractures involving the right knee joint and consequent stiffness to the maximum extent, the movements of the right leg were restricted and thereby the claimant suffered 30 to 40% of permanent disability. The respondent/Insurance Company has not challenged his competency and the factum of his treating the claimant. Ex.A.6—discharge card issued by Mahaveer Hospital Research Centre, stands testimonial to the fact that PW.2 treated claimant. Hence there is nothing to disbelieve the evidence of PW.2. Merely because the disability certificate issued by the Medical Board or some other competent authority is not produced, on that ground alone the evidence of PW.2 cannot be discarded. In **Raj Kumar's** case (1 supra) cited by the appellant, the Apex Court exhaustively dealt with how to

appreciate medical evidence in determining the disability of a victim in a motor accident case. Incidentally, the Apex Court also discussed about the authenticity of the disability certified by a competent doctor who treated or who on clinical examination certified the disability. The Apex Court summarized its principles as follows:

“Para 19: We may now summarise the principles discussed above:

- (i) xx xx*
- (ii) xx xx*
- (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.”*

Thus a perusal of above principles would show that either a qualified doctor who treated the victim or another competent doctor who clinically examined the victim are authorized to depose about the disability suffered by the victim. In such instances, the Courts need not discard the disability certified by them on the mere ground that the victim has not produced disability certificate issued by the Medical Boards. Ofcourse, concerned Doctor who speaks about the disability of the victim should be examined the Court of law as an expert witness to enable the opposite party to challenge the veracity of his evidence and also the Court to assess the probative value of his evidence. In the instant case, the

Tribunal rejected the evidence of PW.2 on the sole ground that disability certificate was not produced. I am afraid, this approach is not correct in view of the above judgment of the Apex Court. Hence the claimant deserves compensation for the disability. It must be noted that the disability spoken by PW.2 is a physical disability. The Court has to consider the functional disability to assess the loss of earning capacity. The version of claimant was that prior to accident he was doing Kirana Business and earning Rs.8,000/- p.m and now because of the disability he lost his earning power. In Ex.A.2—charge sheet, the occupation of the claimant who is referred as LW.2 is mentioned as business. So it can be believed that the claimant was doing Kirana business. Having regard to the nature of his avocation, it can be said that the physical disability suffered by him will hinder his earning capacity to some extent. Therefore, his functional disability can be accepted as 15%. There is no proper evidence regarding his earnings. Hence going by the nature of his occupation, his annual income is taken as Rs.36,000/-. The claimant was aged 50 years by the date of accident and for the said age '13' is provided as multiplier in ***Sarla Verma vs. Delhi Transport Corporation***^[2]. So the compensation for loss of earning power due to disability comes to **Rs.70,200/-** (Rs.36,000/- x 13 x 15%) and the same is awarded.

9) The next contention of the appellant is that the Tribunal awarded low amount of Rs.70,000/- towards medical

expenditure inspite of the fact that Ex.A.5—medical bills show much higher amount. Considering the nature of fracture injuries and the treatment underwent by him and also considering the Ex.A.5—medical bills, the medical expenditure is enhanced to **Rs.90,000/-**. Thus the total compensation payable to the claimant under different heads is detailed as below:

Pain and suffering	Rs.
50,000-00	
Medical expenditure	Rs. 90,000-00
Loss of earning power due to disability	Rs. 70,200-00

Total:	Rs.2,10,200-00

So, the compensation is enhanced by Rs.90,200/- (Rs.2,10,200/- minus Rs.1,20,000/-).

10) In the result, this M.A.C.M.A is partly allowed and ordered as follows:

- a) The compensation is enhanced by Rs.90,200/- with proportionate costs. The enhanced compensation amount shall carry interest at the rate of 7.5% p.a from the date of O.P till the date of realization.
- b) The respondents 1 and 2 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: 28.10.2015

SCS

[\[1\]](#) (2011) 1 SCC 343 = (2011) 1 SCC (Cri) 1161

[\[2\]](#) 2009 ACJ 1298 (SC) = AIR 2009 SC 3104