

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1222 of 2009

JUDGMENT:

Challenging the compensation in O.P.No.267 of 2005 awarded by the Chairman, M.A.C.T-cum-I Additional District Judge, West Godavari, Eluru (for short “the Tribunal”), the 4th respondent—New India Assurance Company Limited, West Godavari preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 26.10.2004 at about 3.30 PM, when the claimant was travelling from Palakole to Mumbai in a lorry bearing No.AP 16T 6278 as a cleaner with a load of coconuts and when the said lorry reached Pune—Mumbai Express High Way near Dhehu village, a driver of another lorry No.MH 06 K 5156 going in front of their lorry (AP 16T 6278), applied sudden breaks due to which, the claimant's lorry driver unable to control his lorry went and hit the rear-side of lorry bearing No.MH 06 K 5156 and as a result, the driver of the lorry No.AP 16T 6278 died on the spot and claimant received grievous injuries. It is averred that driver of lorry bearing No.MH 06 K 5156 was responsible for the accident. On these averments, the claimant filed O.P.No.267 of 2005 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondents 1 and 2, who are the driver and owner of lorry bearing No.MH 06 5156; respondent No.3—owner of lorry bearing No.AP 16 T 6278 and respondent No.4—insurer of both lorries and claimed Rs.11,33,000/- as compensation under different heads mentioned in OP.

b) Respondents 1 to 3 set ex-parte.

c) Respondent No.4—Insurance Company filed counter and opposed the petition contending that accident was occurred due to negligence of the driver of the lorry bearing No.AP 16 T 6278 and there was no fault of the driver of the lorry bearing No. MA 06 K 5156 and further the claimant was an unauthorized passenger in the lorry bearing No. AP 16 T 6278 and hence, the insurance company is not liable for violation of the terms of the policy.

R.4 further contended that the compensation claimed is excessive and exorbitant and prayed for dismissal of the claim petition.

d) During trial, PWs.1 to 4 were examined and Exs.A1 to A13 were marked on behalf of claimant. Exs.B1 & B2 and Ex.X1 & X2 were marked on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.6,34,471/- with costs and interest at 7.5% p.a. against respondents 3 and 4 and dismissed the claim against respondents 1 and 2.

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Sri Kota Subba Rao, learned counsel for appellant/Insurance Company and Sri A.Veera Swamy, learned counsel for respondent No.1/claimant. Respondents 2 to 4 are not necessary as per cause title.

5) Impugning the Award, learned counsel for appellant argued that the compensation awarded under different heads is highly excessive and untenable and the disability of 70% as accepted by the Tribunal is also on high side. It is argued that the claimant can be put into other gainful employment and can earn money for his livelihood and therefore, the compensation may be re-assessed. He, thus, prayed to allow the Appeal.

6) Learned counsel for respondent No.1/claimant opposed the appeal and submitted that the compensation awarded under different heads is just and reasonable and hence, there is no need to revise the same. He, thus, prayed for dismissal of 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 two lorries, injuries to the claimant and consequent disability due to amputation of his left leg above knee are not in dispute and they are amply proved by documentary evidence. PW.2, who is the Member of the District Medical Board, Eluru, deposed that on examination of the claimant, he found to have disability due to the above knee amputation of left lower limb and accordingly, he assessed his disability at 70% and issued Ex.A.13-Disability Certificate. The Tribunal having considered that the claimant was aged 32 years old and suffered permanent disability to his left leg and injuries to other parts of the body i.e, left lower limb, left elbow, right side of forehead and anal region due to piercing of metal rod and fracture of right hip joint, awarded compensation of Rs.6,34,471 under different heads. On a meticulous scrutiny of the various heads of compensation, in my considered view, the Tribunal has not committed any blunder in awarding the aforesaid compensation, having regard to the grievous injuries and disability suffered by him. I see no merits in this appeal.

9) In the result, this M.A.C.M.A is dismissed by confirming the Award passed by the Tribunal in O.P.No.267 of 2005. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 16.07.2015

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