

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

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M.A.C.M.A.No.1174 of 2009

JUDGMENT:

Challenging the compensation awarded in M.V.O.P.No.220 of 2003 dated 28.02.2007 by the Chairman, MACT-cum-VI Additional District Judge (Fast Track Court), Tirupathi for short 'the Tribunal'), the second respondent—New India Assurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 20.08.2002 at about 5.45 PM when she was proceeding towards Chavatagunta from Palakuntacheruvu on Pachikapalem—Chavatagunta road, a motorcycle bearing No.AP 03 J 9642 being driven by its rider in a rash and negligent manner and at high speed, while overtaking another motorcycle in its front, lost control and dashed against the claimant causing bleeding injuries all over the body. Immediately she was admitted in SVRRG Hospital, Tirupathi and later shifted to Prashanth Hospital for better treatment. It is averred that rider of the motorcycle was responsible for the accident. On these averments the claimant filed M.V.O.P.No.220 of 2003 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondents 1 and 2, who are the owner and insurer of the motorcycle and claimed Rs.4,00,000/- as compensation under different heads mentioned in OP.

b) R1—owner filed counter denying all the averments made in the petition and contended that claimant herself was liable for causing the accident. He further contended that as the vehicle in question was insured with 2nd respondent/Insurance Company and the policy was in force at the time of accident, the Insurance Company is liable to pay

compensation. He also contended that compensation claimed is highly excessive and exorbitant.

c) R2—Insurance Company filed counter and opposed the petition contending that motorcyclist was not at fault and claimant herself responsible for causing the accident. R2 further contended that compensation claimed is excessive and exorbitant and prayed for dismissal.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimant. Ex.B1—copy of Insurance policy was marked on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.1,72,200/- with costs and interest at 7% p.a. against respondents 1 and 2 under different heads as follows:

	Pain and suffering	Rs. 10,000-00
	Medical expenditure	Rs. 47,200-00
	Transport charges	Rs. 500-00
	Loss of future earning power	Rs. 94,500-00
	Partial disability	Rs. 20,000-00
	Total	<u>Rs.1,72,200-00</u>

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Sri Katta Laxmi Prasad, learned counsel for appellant/ Insurance Company; Sri V.Nitesh, learned counsel for

R1/claimant. Notice sent to R2/owner was served but no representation on his behalf.

5a) Criticizing the award learned counsel for appellant/Insurance Company firstly argued that admittedly the accident was occurred when the claimant was crossing the road and thus it is clear that she contributed for the accident as she crossed the road unmindful of vehicles passing on the road. Hence, compensation needs to be reduced to the extent contributed by her.

b) Secondly, learned counsel argued that the Tribunal erred in believing the disability certificate and evidence of PW2 in fixing the alleged disability of the claimant at 35%. He argued that admittedly he did not treat the claimant in SVRRG Hospital, but he examined her in his private clinic and issued Ex.A5—disability certificate by affixing his official stamp hence it cannot be looked into. He contended that as the claimant claims to have taken treatment in SVRRG Hospital, she ought to have obtained disability certificate issued by the Medical Board constituted by the said hospital authorities. He thus argued that claimant has not suffered any disability and the Tribunal erred in accepting the disability basing on the evidence of PW2 and Ex.A5.

c) Thirdly, learned counsel argued that the Tribunal committed error in accepting Ex.A6—medical bills and awarding Rs.47,200/-. He vigorously argued that Ex.A6—medical bills were said to be issued by Dr. V.Sunanda Kumar Reddy of Prashant Hospital under whom the claimant allegedly took treatment after discharge from SVRRG hospital, but she did not examine the said doctor in proof of Ex.A6—bills.

He thus prayed to allow the appeal.

6a) Per contra, while supporting the award, learned counsel for R1/claimant argued that the accident in fact was occurred when the rider of the motorcycle overtook his front vehicle and went in a rash and

negligent manner and dashed the claimant and this aspect was amply established by the claimant in her evidence coupled with Ex.A2—charge sheet. Merely because the accident was occurred while she was crossing the road, there cannot be any presumption that she was crossing the road unmindful of vehicles on either side and consequently she contributed for the accident. The respondents in OP have not adduced any positive evidence to prove that claimant contributed for the accident. Hence, the appellant cannot bring forth the argument of contributory negligence for the first time in the appeal without any evidence on board.

b) Secondly, he argued that claimant established her disability through the evidence of PW2 and Ex.A5. Merely because PW2 was not the doctor who treated her, his evidence cannot be discarded. PW2 was a qualified Orthopedic Surgeon and hence he is competent to issue disability certificate. That he has not treated her initially cannot be a ground to discard his evidence. On this aspect he relied upon the judgment of this Court in ***N.Surendra Babu v. Narasimha Reddy***^[1].

c) Nextly, supporting Ex.A6—medical bills, he argued that the appellant has not contested about the genuinity of medical bills and hence the Tribunal awarded the amount covered by Ex.A6. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

“Whether the award passed by the lower Tribunal is factually and legally sustainable?”

8 a) **POINT**: Accident, involvement of motorcycle bearing No. AP 03 J 9642 and injuries to the claimant are not in dispute. The first contention

raised on behalf of appellant/Insurance Company is with regard to contributory negligence of the claimant. Regarding the manner of accident the evidence of PW1 is that on 20.08.2002 at about 5.45 PM at Palakuntacheruvu bus stop while she was crossing the road the rider of Hero Honda motorcycle viz. A.Keshava Reddy drove the vehicle in a rash and negligent manner by overtaking his front vehicle and lost control over the bike and dashed her. She asserted that the accident was occurred due to the fault of rider of motorcycle. In cross-examination except suggesting that accident was occurred due to her fault as she negligently tried to cross the road, which she denied, nothing tangible was brought on record to hold that the rider of the motorcycle was in fact riding the vehicle in a normal speed and on the other hand, the claimant herself hurriedly tried to cross the road without observing the vehicles on either side. Further, the respondents in the OP did not adduce any positive evidence by examining the rider of the motorcycle to prove his innocence. On the other hand, Ex.A2—charge sheet which shows that police too after investigation found fault with the motorcycle rider, amply corroborated the evidence of PW1. Therefore, the fault of the rider of the motorcycle is copiously established. As rightly argued, merely the accident was occurred while the claimant was crossing the road, there cannot be an automatic presumption that the claimant contributed for the accident. Thus, this argument cannot be accepted.

b) The next argument is in respect of the disability of the claimant. PW2 an Orthopedic Surgeon in SVRRG Hospital issued Ex.A6 on clinical examination of claimant. It is true that he did not treat the claimant in SVRRG Hospital, but he examined in his private clinic and issued Ex.A5 certifying that claimant suffered 35% permanent disability due to fracture of left humerus lower end and wedge compression of L5. The contention of appellant is two fold—that PW2 was not the doctor

who treated the claimant and so he is not competent to issue Ex.A5 and further, the claimant has not produced disability certificate issued by the Medical Board constituted by SVRRG Hospital. I am afraid, basing on the above contentions Ex.A5 cannot be discarded. In the cited decision, this High Court basing on the judgment of the Apex Court in ***Raj Kumar vs. Ajay Kumar and another***^[2] held that if a Doctor is a qualified doctor to speak about the disability and if he, on thorough clinical examination of the patient and on obtaining X-ray reports, speaks about disability, the same is admissible in evidence though he is not a treatment doctor. It was held his evidence stands in the position of an expert's evidence with reference to Section 45 of Indian Evidence Act and hence it is admissible. The opposite party can cross-examine him with regard to his qualification and competency etc. The Court may thereupon either believe or reject his evidence, but it cannot reject the evidence of the doctor out-rightly on the sole ground that he has not treated the patient.

c) The ratio in the above decision applies to the instant case also. PW2 is admittedly an Orthopedic Surgeon who during the relevant time was working in SVRRG Hospital and also doing private practice. Though he has not treated the claimant, he examined the claimant in his clinic and issued Ex.A5—certificate of course, with the official stamp. His qualification and competency are not tested in the cross-examination. So, his evidence cannot be discarded on the mere ground that he has not treated the claimant and Ex.A5—disability certificate was not issued by the Medical Board.

d) Then, coming to the accuracy of disability certified by him, in the cross-examination he stated that he arrived at 35% disability basing on a chart. He has not further revealed as to the nature of that chart. Therefore, in my considered view, 35% of disability spoken by PW2 cannot be taken for granted. Having regard to the nature of injuries i.e. fracture to left humerus and wedge compression of L5 and their effect on her avocation as a tailor, the functional disability can be accepted at **25%** only. Consequently the compensation for loss of earning power comes to **Rs.67,500/-** (Rs.15,000 x 18 x 25%).

9) The next contention is concerned, Ex.A6—medical bills would show as if the claimant incurred medical expenditure of Rs.47,000/- and odd. The medical bills were issued by Prashant Hospital and claimant has not examined the doctor or concerned other Medical Officer who issued Ex.A6—medical bills. However, the point is whether on this ground alone, the entire medical expenditure can be discarded. The answer is emphatic '*no*'. It is evident from Ex.A3—wound certificate that the claimant suffered two fractures i.e. fracture of lower 1/3 left humerus and fracture of aecia ramie right pelvis for which she took treatment initially in SVRRG Hospital and later in Prashant Hospital. Having regard to the grievous nature of the fracture injuries, incurring medical expenditure of Rs.47,000/- and odd cannot be ruled out. Therefore, I find no force in the argument of appellant. Thus, the compensation payable to the claimant under different heads is as follows:

Pain and suffering

Rs. 10,000-00

00	Medical expenditure	Rs. 47,200-
	Transport charges	Rs. 500-00
	Loss of future earning power	Rs. 67,500-00
00	Partial disability	Rs. 20,000-
	Total	<u>Rs.1,45,200-00</u>

Thus, the compensation is decreased by Rs.**27,000/-**
(Rs.1,72,200/- minus Rs.1,45,200/-).

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

- a. Compensation awarded by the Tribunal is reduced from Rs.1,72,200/- to Rs.1,45,200/-.
- b. The 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.
- c. No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 28.09.2015
Murthy

^[1] MACMA No.3763 of 2009 dated 07.04.2014

^[2] (2011) 1 SCC 343