

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A. No.894 of 2004

JUDGMENT:

Challenging the quantum of compensation awarded by the MACT-cum-IV Additional District Judge, Guntur in MVOP No.616 of 1999 the claimant has preferred the instant CMA.

2) The factual matrix of the case is thus:

a) On 06.05.1999 when the claimant was travelling in a lorry bearing No.AP 7 U 1134, on the way, a milk tanker bearing No.AP 09 T 1698 came in opposite direction and hit the lorry. As a result, claimant and other persons in the lorry suffered injuries. The claimant is concerned, he sustained fracture to his right humerus and treated in Government General Hospital (GGH), Guntur. The claimant filed M.V.O.P.No.616 of 1999 against respondents 1 and 2 who are the owner and insurer of the milk tanker and also against respondents 3 and 4 who are the owner and insurer of the lorry and claimed Rs.1 lakh as compensation.

b) Respondents 1 and 3 have not contested the matter and respondents 2 and 4 filed counters and opposed the claim.

c) The Tribunal on appreciation of evidence both oral and documentary, ultimately awarded Rs.19,500/- under different heads as follows against respondents 1 and 2 on the observation that accident was occurred due to the fault of driver of milk tanker.

Fracture injury	Rs. 15,000-00
Pain and suffering	Rs. 3,000-00
Medical expenses	Rs. 1,500-00

Total	Rs. 19,500-00

Hence the instant CMA by the claimant.

3) Heard arguments of Sri A.Rajendra Babu, learned counsel for appellant, Smt. M.Bhaskara Lakshmi, learned counsel for R2/Insurance Company and Kota Subba Rao, learned counsel for R4/Insurance Company. None appeared for R1 and R3.

4) Challenging the compensation awarded as grossly low and unjust, learned counsel for appellant/claimant would argue that as per the evidence of PW2—doctor who treated the claimant in GGH, Guntur, the claimant suffered fracture of right humerus which resulted in angulation of his right hand and caused him 15% physical disability and thereby, he is not able to drive lorry for long distances and suffered loss of earning power besides physical disability and though the Tribunal accepted the medical evidence in respect of physical disability of the claimant, however did not adequately compensated the claimant for the loss of his earning power but granted a pittance of Rs.15,000/- in a lumpsum manner for fracture of his right hand. Learned counsel vehemently argued that claimant is entitled to compensation for loss of future earnings also. He also argued that the Tribunal has not granted compensation for extra-nourishment expenses and attendance charges etc. in spite of the fact that claimant underwent

treatment for a considerable period in GGH, Guntur. He thus prayed to allow the appeal and enhance the compensation.

5) Per contra, learned counsel for R2/Insurance Company while supporting the award stated that though from the medical evidence the Tribunal observed that claimant cannot drive lorry for long distances, there was no supporting evidence from the claimant's side to show that prior to the accident he was engaged in driving the vehicle for long distances and earning high income and subsequent to the accident he lost that opportunity. Therefore, the Tribunal rightly awarded Rs.19,500/- under different heads which is just and reasonable by all means and there is no need to revise the compensation.

6) 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?”

7) **POINT**: Accident, involvement of lorry bearing No.AP 7U 1134 and milk tanker bearing No.AP 09 T 1698 and claimant suffering injuries are not in dispute. The main contention is adequacy of compensation.

a) In the above context, when the award of the lower Tribunal is perused, it would appear the Tribunal basing on the medical evidence of PW2, observed that due to fracture of right humerus claimant suffered angulation of his right hand which resulted in 15% physical disability. The Tribunal further observed that slight angulation resulted in restricted movements in his right hand. The Tribunal also observed that claimant

cannot drive the lorry for long distances. On these observations the Tribunal came to the conclusion that there is no complete loss of earning power, but he can earn something by performing his normal duties as driver. Accordingly, the Tribunal awarded Rs.15,000/- for fracture of right humerus and Rs.1,500/- towards medical expenses and Rs.3,000/- towards pain and suffering and thus granted Rs.19,500/- as stated supra.

b) In my considered view, the Tribunal has not properly considered the resultant loss of earning power of the claimant as argued by the counsel for appellant. It is the case of the claimant that he was a lorry driver in Saibaba Transport, Macherla and was earning Rs.2,000/- per month. The medical evidence which was relied upon by the Tribunal would show that claimant suffered fracture in his right hand which resulted in angulation and restriction of the movements. The physical disability assessed was 15%.

c) Functional disability is concerned, due to irregular shape and restriction of the movements of his right hand, the claimant cannot drive the lorry for long distances. It may be stated that generally lorries will be engaged from transport companies for transporting the goods and articles for long distances. In that view of the matter, when claimants' functional disability is taken into consideration, he cannot drive for long distances. It is a fact that a driver who goes on long journeys for transporting articles will earn more income which is not available to the claimant. Therefore, though he can drive lorry he cannot drive it for long distances and thereby he suffered loss of earning power. There is no cogent evidence with regard to earnings of claimant during long trips. Hence, in the matter of granting

compensation for loss of earning power, reasonable guess work is required. Considering the occupation of claimant and also the loss of earning power which resulted due to physical disability, an additional amount of Rs.30,000/- can be awarded to compensate the loss of earning power besides Rs.15,000/- which was awarded by the Tribunal for injuries.

d) Sofaras other items of compensation are concerned, the Tribunal has not awarded compensation for attendant expenses and extra-nourishment charges. Admittedly, the claimant underwent treatment in GGH, Guntur and therefore, he must have required the assistance of an attendant and also good food to recoup his health. In such circumstances, Rs.2,500/- each under the above heads is granted.

Thus, the total compensation payable to the claimant under different heads is detailed as below:

Fracture injury	Rs. 15,000-00
Pain and suffering	Rs. 3,000-00
Medical expenses	Rs. 1,500-00
Loss of earning power	Rs. 30,000-00
Attendant expenses	Rs. 2,500-00
Extra-nourishment charges	Rs. 2,500-00

Total	Rs. 54,500-00

So, the compensation is enhanced by **Rs.35,000/-** (Rs.54,500/- minus Rs.19,500/-).

8) In the result, this Appeal is partly allowed with costs and ordered as follows:

- (i) The compensation is enhanced from **Rs.19,500/-** to **Rs.54,500/-** with proportionate costs and interest @ 9% per annum from the date of OP till the date of award and @ 7.5% per annum subsequently.
- (ii) Respondents 1 and 2 in the appeal are directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them.

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

Date: 05.12.2016
Murthy



U.DURGA PRASAD RAO, J