

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1550 of 2009

JUDGMENT:

Aggrieved by the Award dated 12.09.2005 in O.P.No.1465 of 2001 passed by the Chairman, M.A.C.T-cum-VI Additional District Judge, Nizamabad at Kamareddy (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 13.11.2000 at about 11.30 AM, when she was traveling in auto bearing No.AP 25 T 9239, the driver of the auto drove the same in a rash and negligent manner and at high speed and lost control over the vehicle and due to which the auto fell in a ditch and turned turtle. Thereby, the claimant suffered multiple fracture injuries all over the body. Immediately she was admitted in Government Hospital, Kamareddy and thereafter she took treatment under private doctors by spending Rs.70,000/-. On these pleas, the claimant filed O.P.No.1465 of 2001 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent Nos.1 and 2 who are the owner and insurer of the offending auto and claimed Rs.1,50,000/- as compensation.

b) R1/owner filed counter contending that auto was

insured with R2/Insurance Company and policy was in force and hence, he is not liable to pay compensation and R2 alone is liable to pay the same.

c) R2/Insurance Company filed counter denying petition mentioned material allegations and urged to put the claimant in strict proof of the same. R2 contended that driver of auto had no valid and effective license at the time of accident. Finally, R2 contended that the compensation claimed is excessive and thus prayed for dismissal of OP.

d) During trial, PW1 was examined and Exs.A1 to A17 were marked on behalf of claimant. Exs.B1 and B2 were marked on behalf of respondents.

e) The Tribunal, on appreciation of both oral and documentary evidence, had awarded Rs.45,000/- as compensation against respondents with proportionate costs and interest @ 9% p.a. under different heads as below:

Pain and suffering	Rs. 10,000-00
Fracture injury	Rs. 20,000-00
Loss of earnings	Rs. 15,000-00

Total Rs. 45,000-00	

Hence, the appeal by claimant.

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

4) Heard arguments of Sri Venkateshwar Varanasi, learned counsel for appellant/claimant and Sri Bathula Raj Kiran, learned counsel for respondent No.2/Insurance Company. R1/owner is not necessary as per cause title.

5) Learned counsel for appellant/claimant fulminated the award that compensation was low and inadequate and Tribunal has not granted any compensation for medical expenditure, extra-nourishment and transport charges incurred by claimant on the sole ground that claimant has not produced any documentary evidence. Learned counsel argued that though the claimant due to illiteracy could not produce documentary evidence, but the fact remains she suffered fracture to her left clavicle bone for which she took treatment in a private hospital and in that view of the matter, a reasonable amount for medical expenditure and other incidental expenditure like extra-nourishment and transport charges should have been granted. He thus prayed to allow the appeal and enhance the compensation.

6) Per contra, learned counsel for R2/Insurance Company argued that claimant miserably failed to produce any proof regarding medical expenditure and also for extra-nourishment and transport charges and therefore, Tribunal rightly discarded her claim in that regard and there is no need to interfere with the award passed by the Tribunal.

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

determination is:

“Whether compensation awarded by the Tribunal is just and reasonable and needs interference?”

8) **POINT:** Accident, involvement of Auto bearing No.AP 25T 9239 and claimant suffering injuries is not in dispute. Ex.A4—wound certificate and Exs.A15 and 16 X-ray reports show the claimant suffered fracture to her left clavicle bone in the resultant accident for which she took treatment. It is true that claimant has not produced any medical bills in proof of the medical expenditure. However, the fact is that she was treated in a private hospital. Therefore, Tribunal ought to have granted reasonable amount for medical expenditure and also other incidental expenditure like extra-nourishment and transport charges. Considering the injuries suffered by the claimant and having regard to the fact that she took treatment in a private hospital, a sum of Rs.10,000/- towards medical expenditure; Rs.5,000/- towards extra-nourishment charges and Rs.3,000/- towards transport charges are awarded to the claimant. Thus, the total compensation payable to the claimant is as follows:

Pain and suffering	Rs. 10,000-00
Fracture injury	Rs. 20,000-00
Loss of earnings	Rs. 15,000-00
Medical expenditure	Rs. 10,000-00
Extra-nourishment	Rs. 5,000-00
Transport charges	Rs. 3,000-00

Total	Rs.63,000-00

Thus, the compensation is enhanced by **Rs.18,000/-**
(Rs.63,000/- minus Rs.45,000/-)

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

- a) The compensation is enhanced by **Rs.18,000/-** 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) Respondents 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 applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 25.02.2016

Murthy