

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.609 of 2009

JUDGMENT:

Aggrieved by the Award dt:20.08.2004 in O.P.No.673 of 2002 passed by the Chairman, M.A.C.T-cum-XIII Addl. Chief Judge (FTC), City Civil Court, Hyderabad (for short 'the Tribunal'), the claimant preferred the instant appeal.

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

3) The factual matrix of the case is thus:

a) The case of the claimant is that on 17.11.2001 he was going in an auto bearing No.AP 9 W 8101 along with other passengers and when they reached near Culvert of Malkapur village, suddenly a lorry bearing No.AHB 1424 being driven by its driver at high speed and in a rash and negligent manner, dashed the auto. In the resultant accident, the claimant fell down on the road and sustained multiple fractures and severe head injuries. Immediately he was shifted to Government Hospital, Sadasivapet for first-aid treatment and then shifted to A.P.Vidhana Parishad Hospital for better treatment. It is averred that the accident was occurred due to the rash and negligent driving by the driver of lorry. On these pleas, the claimant filed O.P.No.673 of 2002 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 lorry and claimed Rs.2,50,000/- as compensation.

- b) R.1 remained *ex parte*.
- c) R.2 filed counter denying petition mentioned material allegations and urged to put the claimant in strict proof of the same. Finally R.2 contended that the compensation claimed is excessive and thus prayed for dismissal of OP.
- d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimant. Policy copy filed by 2nd respondent was marked Ex.B.1.
- e) The Tribunal, on appreciation of both oral and documentary evidence, had awarded Rs.58,000/- as compensation against respondents with proportionate costs and interest @ 9% p.a. under different heads as below:

Damage to clothes	Rs.
<u>1,000/-</u>	
Transport to hospital and house	Rs.
2,000/-	
Pain and suffering	
Rs.10,000/-	
Extra nourishment	
Rs.10,000/-	
Loss of earnings	Rs.10,000/-
Medicines etc.,	Rs. 5,000/-
Inconvenience & temporary disability	
Rs.20,000/-	

Total	Rs.58,000/-

Hence, the appeal by claimant.

4) Heard arguments of Sri Kota Subba Rao, learned counsel for appellant/ claimant and Smt.A.Malathi, learned counsel for respondent No.2/Insurance Company. Though Notice on R.1/owner was served but there is no appearance on his behalf and hence treated as heard.

5) Fulminating the award learned counsel for appellant mainly contended that the claimant suffered fracture to his right forearm which resulted in 45% disability as deposed by PW.2 who is a qualified Orthopedic Surgeon but the Tribunal discarded the said evidence on the flimsy ground that the claimant did not obtain disability certificate from the Gandhi Hospital where he underwent treatment and further, he obtained the certificate long after he was discharged from the Hospital. He argued that the claimant suffered injuries in the accident that occurred on 15.07.2001 and no doubt he obtained disability certificate from PW.2 in January, 2004 but it must be noted that the disability will be assessed accurately only after the injuries are healed and union or malunion of the bones are correctly known and therefore, it is not correct on the part of the lower Tribunal to discard Ex.A.4 on the ground that the disability certificate was obtained long after the accident. He thus prayed to allow the appeal and refix the compensation suitably.

6) Per contra, learned counsel for respondent No.2/Insurance Company supported the award and argued that the claimant failed to prove his alleged disability by

adducing cogent evidence and therefore the lower Tribunal rightly turned down his claim but however, awarded Rs.20,000/- for a temporary disability which is just and reasonable. He thus prayed to dismiss 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 Award shows that the claimant suffered fracture to his right forearm in the resultant accident and he underwent treatment in Gandhi Hospital, where he was treated and nails were inserted for his fractured forearm. The claimant examined PW.2—Dr.G.Subhash Rao, Orthopedic Surgeon who issued Ex.A.4—disability certificate. According to him, there was stiffness and restriction of movement of joints in the right forearm within the range of 20% to 100% and thereby he suffered 45% disability in the right forearm. The Tribunal discarded his evidence on the ground that the claimant suffered injuries on 17.11.2001 and he obtained disability certificate belatedly after 2 years on 24.01.2004 and further, he was treated and operated in Gandhi Hospital and instead of securing the disability certificate from that Hospital he obtained Ex.A.4 from PW.2 and there is no evidence that PW.2 obtained X-ray before issuing Ex.A.4. On these observations the Tribunal did not consider 45% disability certified by PW.2. However, on the assumption that the petitioner might have

suffered temporary disability, the Tribunal awarded Rs.20,000/-.

9) On a careful scrutiny of the facts and evidence I am unable to subscribe the views taken by the Tribunal. As rightly argued by learned counsel for appellant, the disability cannot be assessed immediately after the victim is discharged from the Hospital. On the other hand, after the fracture injuries are healed and the bones are united, the malunion or proper union of the fractured bones can be known. Such assessment will be possible only after a reasonable period of one year or so, to know the disability. So merely because the claimant happened to obtain Ex.A.4—disability certificate 2 years after his discharge from the hospital, that cannot be a ground to discard the disability certificate. The next observation that the disability certificate was not procured from the Gandhi Hospital is also not a sound reason to discard the disability certificate. It is not in dispute that PW.2 is a competent Orthopedic Surgeon. Hence, he can issue the disability certificate on examination of the petitioner. Therefore, the Tribunal ought to have considered the evidence of PW.2 in favour of the claimant. Coming to the disability certified by PW.2, taking into consideration the restriction of the flexion of his right forearm, PW.2 certified the disability at 45%. Considering this physical disability, one has to assess the functional disability basing on the avocation of the claimant. Admittedly the claimant is an auto driver and the disability in his forearm will certainly have

an adverse impact on his driving profession and consequently his earning capacity. Therefore, his functional disability can be taken atleast as 10%.

a) Computation of compensation is concerned, the Tribunal accepted his monthly earnings as Rs.3500/- which appears to be reasonable one. He was aged about 28 years by the time of accident. Therefore, '15' can be taken as multiplier. Thus the loss of earning power due to 10% disability comes to Rs.63,000/- (Rs.3500/- x 12 x 15 x 10%). The Tribunal already awarded Rs.20,000/- towards temporary disability. Therefore, total compensation payable to the claimant is detailed as below:

<u>Damage to clothes</u>	<u>Rs.</u>
<u>1,000/-</u>	
Transport to hospital and house	Rs.
2,000/-	
Pain and suffering	
Rs.10,000/-	
Extra nourishment	
Rs.10,000/-	
Loss of earnings	Rs.10,000/-
Medicines etc.,	Rs. 5,000/-
Loss of earning power due to disability	Rs.63,000/-

Total	Rs.1,01,000/-

Thus the compensation is enhanced by Rs.43,000/- (Rs.1,01,000/- minus Rs.58,000/-)

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

- a) The compensation is enhanced by **Rs.43,000/-** 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) Respondent No.2 is directed to deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against it.

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

U. DURGA PRASAD RAO, J

Date: 25.02.2016

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