

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A. No.3037 of 2003

JUDGMENT:

Challenging the Award dated 31.03.2003 in M.O.P.No.50 of 009 passed by the Chairman, MACT-cum-III Additional District Judge, Visakhapatnam (for short “the Tribunal”), the claimant preferred the instant appeal.

2) The parties in this appeal are referred as they were arrayed before the lower Tribunal.

3) The factual matrix of the case is thus:

a) On 20.01.1998 at about 11:45pm, when the claimant was proceeding slowly on his Bajaj Chetak scooter bearing No.AHQ 3294 towards Petrol Bunk inside the INS Circar, Naval Base, Visakhapatnam, a Navy Vehicle—Maruthi Gypsy bearing No.197 063023K being driven by its driver i.e., R.1 came at a high speed and in a rash and negligent manner and dashed the claimant. In the resultant accident, the claimant sustained multiple grievous injuries. On these pleas, the claimant filed M.O.P.No.50 of 1999 against respondents 1 to 3, who are the driver and owner of the offending vehicle and claimed Rs.3,71,371/- as compensation under different heads mentioned in the O.P.

b) Respondents 1 remained *ex parte*.

c) R2 filed counter and denied the material averments made in the O.P and urged to put the claimant in strict proof of the same. Finally it

contended that compensation claimed was highly excessive and exorbitant. Thus, it prayed for dismissal of OP.

d) During trial, PWs.1 to 4 were examined and Exs.A.1 to A.32 were marked on behalf of claimant. RW.1 was examined and no documents were marked on behalf of respondents.

e) The Tribunal on appreciation of evidence both oral and documentary, awarded Rs.1,64,500/- under different heads against respondents 1 to 3, as below:

Compensation for injuries	Rs. 50,000-00
Shock, pain and suffering	Rs. 25,000-00
Medical, hospital, extra nourishment, Attendant, transport & incidental charges	Rs. 25,000-00
Loss of earnings	Rs. 50,000-00
Loss of opportunities of life, shortened expectation of life, loss of amenities of life, loss of enjoyment of life & social disability	Rs. 10,000-00
Damages to the scooter	Rs. 4,500-00
Total	Rs.1,64,500-00

Hence the instant CMA by the claimant.

3) Heard arguments of Sri K.Srinivasa Rao, learned counsel for appellant/claimant. Case against R1 was dismissed for default vide Court Order dated 19.11.2015. Though the matter was adjourned several times for the arguments of respondents, there was no representation for respondents.

4 a) Fulminating the quantum of compensation awarded as low and inadequate, learned counsel for appellant/claimant firstly argued that

despite the fact that the claimant suffered fracture to his right lower limb and fracture of skull bone and underwent three operations and experienced breathlessness and chest pain during the course of treatment, the Tribunal awarded a paltry sum of Rs.50,000/- for the bony injuries which by all means a pittance.

b) Secondly, learned counsel argued that the Tribunal awarded low compensation of Rs.25,000/- for shock, pain and suffering without taking into consideration the multiple fractures and prolonged treatment underwent in two different hospitals and other complications like chest pain and breathlessness faced by claimant during the course of treatment. He prayed to enhance the compensation for pain and suffering.

c) Thirdly, severely castigating the trial Court's granting only Rs.25,000/- towards attendant, extra nourishment, transport, hospital, medical and other incidental charges against claim of Rs.88,000/- towards medical expenditure and instructing claimant to seek reimbursement of his medical expenditure from his organization since he has that facility, learned counsel would argue that a victim of accident, despite having medical reimbursement facility from his employer, has a right to claim medical expenditure in the form of compensation against the driver, owner and insurer and if the victim is driven to his organization to claim medical reimbursement merely because his organization extends such facility, it would amount to mulcting the organization with his medical expenditure, which may sometimes accrues a heavy amount because of critical injuries and prolonged treatment and it would also amount to leaving the

tort-feasors and their insurers scot-free. He thus argued that the Tribunal committed grave error in directing the claimant to seek reimbursement of medical expenditure from his employer. For another reason also such a direction is not justified, he argued. In the instant case, the crime vehicle belongs to the same organization in which the claimant works and irrespective of the direction of the Tribunal that claimant shall seek medical reimbursement from the organization, it is the respondent—organization that has to bear the medical expenditure ultimately because the employer and respondents are one and the same.

d) Finally, he argued that the Tribunal awarded a pittance of Rs.10,000/- for loss of opportunities in life, loss of amenities etc, inspite of the fact that the claimant suffered 30% permanent disability. The said amount being grossly low, the same needs to be enhanced suitably. He thus prayed to allow the appeal.

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

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

6) **POINT:** Sofaras the compensation of Rs.25,000/- for shock, pain and suffering and Rs.50,000/- for bony injuries is concerned, I find those amounts reasonable and there is no need to interfere with the same. Sofaras the medical expenditure is concerned, the direction of the Tribunal to seek reimbursement from his employer needs a revisit in my considered view. It appears that the claimant claimed around Rs.56,190/- in the claim petition, but submitted medical bills worth Rs.88,000/- stating that he footed the

bills. The Tribunal having observed that the claimant has medical reimbursement facility from his organization, awarded only Rs.25,000/- towards incidental expenditure like extra nourishment charges, attendant, transport charges etc., and instructed him to seek reimbursement of his bills from his organization. This approach cannot be countenanced for, this procedure if followed in every case it would amount to exonerating the tort-feasors at the expense of the employer of the accident-victim. As rightly argued, by this method the medical expenditure of the claimant has to be borne by his employer for no fault of the organization. It is true that generally some organizations are reimbursing the medical expenditure of their employees. However, merely because such a facility is available, if the victims of the accident are driven to their organizations to seek medical reimbursement, their employers have to bear the medical expenditure instead of the tort-feasors. On the other hand, if the medical expenditure is allowed in the form of a component of compensation, the same will be borne by the owner and insurer of the crime vehicle. Similar view was expressed by this Court in the case of *The New India Assurance Co. Ltd. vs. Mudam Kistaiah*¹, wherein it was held that the tort-feasors and his indemnifier cannot be exonerated at the expense of the employer of the victim. Therefore, the finding of the Tribunal cannot be sustained. Ofcourse, what is to be observed by the Tribunals is that the claimant shall not make double claim i.e. seeking medical reimbursement from his employer when such facility is available and also making a claim of medical expenditure in his claim petition. In that event, compensation for

¹ 2015(2) ALD Pg.53

medical expenditure will become a windfall rather than just compensation. Therefore, in my considered view, the Tribunals shall not drive the victims to claim medical reimbursement from his employer.

a) In the instant case, no doubt the crime vehicle belonged to the organization where the claimant works and it appears, vehicle had no insurance. However, if the claimant is referred to his organization as a rule of law, the expenditure has to be borne by organization itself. Instead, if the medical expenditure is allowed in the form of compensation, the same will be ultimately borne by the insurer. So, the claimant cannot be referred to his employer for reimbursement. Having regard to the grievous nature of injuries and prolonged treatment underwent by the claimant and the medical bills produced by him, the medical expenditure of Rs.88,000/- appears to be reasonable. Hence, compensation for medical and other incidental expenditure is enhanced from Rs.25,000/- to **Rs.88,000/-**.

7) Then compensation for disability is concerned, the Tribunal on the observation that though he suffered 30% disability, he was getting same salary and did not suffer any loss of earnings, awarded only Rs.10,000/- for loss of opportunities in life, loss of amenities etc. It is true that the claimants continued in the same organization after accident and got the same salary. However, due to 30% disability and shortening of right lower limb, he suffered loss of opportunities in life and also some basic amenities. In that view, Rs.10,000/- appears to be a low amount and hence the same is enhanced to **Rs.40,000/-**. Thus, the total compensation payable to the claimant is as follows:

Compensation for injuries	Rs. 50,000-00
Shock, pain and suffering	Rs. 25,000-00
Medical, hospital, extra nourishment, Attendant, transport & incidental charges	Rs. 88,000-00
Loss of earnings	Rs. 50,000-00
Loss of opportunities of life and some basic amenities of life	Rs. 40,000-00
Damages to the scooter	Rs. 4,500-00

Total	Rs.2,57,500-00

So, the compensation is enhanced by **Rs.93,000/-** (Rs.2,57,500/- minus Rs.1,64,500/-)

8) In the result, this appeal is partly allowed and ordered as follows:

- (i) The compensation is enhanced from **Rs.1,64,500/-** to **Rs.2,57,500/-** with proportionate costs and interest @ 9% per annum from the date of OP till the date of Award and @ 7.5% per annum thereafter.
- (ii) Respondent Nos.1 to 3 in the OP 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.

U.DURGA PRASAD RAO, J

Date: 22.12.2016

scs