

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.378 of 2009

JUDGMENT:

Aggrieved by the Award dt:10.10.2008 in O.P.No.269 of 2007 passed by the Chairman, M.A.C.T-cum-I Additional District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad (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 24.01.2007 at 1.PM, when he was proceeding on foot near RTC Colony bus stop, Hayathnagar, one lorry bearing No.AP 16 TU 9838 being driven by its driver at high speed in a rash and negligent manner dashed against him due which, he sustained multiple and grievous injuries. Immediately he was shifted to Osmania General Hospital for treatment. It is averred that accident was occurred due to rash and negligent driving by the driver of lorry. On these pleas, he filed O.P.No.269 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2 who are owner and insurer of the offending lorry and claimed Rs.2,00,000/- as compensation.

b) R1/owner remained ex-parte.

c) R2/Insurance Company filed counter denying all the averments made in the claim petition and urged to put the claimants to strict proof of the same. It contended that driver of the lorry had no valid licence and hence it is not liable to pay compensation. Finally, R2 contended that compensation claimed by the claimants is highly excessive and exorbitant and prayed to dismiss the OP.

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

e) The Tribunal on appreciation of both oral and documentary evidence held that driver of the lorry was responsible for the accident and ultimately awarded Rs.37,764 as compensation against respondents 1 and 2 with proportionate costs and interest @ 7.5 p.a.

Hence, the appeal by claimant.

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

4) Heard arguments of Sri M.Ram Mohan Reddy, learned counsel for appellant/claimant and Smt. S.A.V.Ratnam, learned counsel for R2/Insurance Company. Notice sent to R1 was served but no representation his behalf.

5 a) Challenging the compensation awarded as too low and inadequate, learned counsel for appellant firstly argued that though the claimant suffered two grievous fractures i.e. fracture of right temporal bone and fracture of left femur and suffered excruciating pain, the Tribunal awarded a paltry amount of Rs.25,000/- and hence the same needs to be enhanced.

b) Secondly he argued that the claimant is a mason by profession and earning Rs.5,000/- per month and due to hospitalization and rest for about six months, suffered income of Rs.30,000/-, but the Tribunal awarded a paltry amount of Rs.7,200/- at the rate of Rs.1,800/- per month for four months. Hence, the said amount also needs enhancement.

c) Thirdly, he argued that the Tribunal awarded a pittance of Rs.64/- towards medical expenditure inspite of the fact that the claimant suffered two grievous fractures as stated supra and underwent treatment and incurred medical expenditure of Rs.30,000/- and therefore the compensation for medical expenditure also required to be increased.

He thus prayed to allow the appeal and enhance compensation suitably.

6) Per Contra learned counsel for 2nd respondent / Insurance Company while supporting the award argued that the claimant has not produced any cogent evidence regarding his earnings and therefore the Tribunal basing on the prevailing labour charges during the year 2007 has rightly fixed his monthly earnings at Rs.1,800/- and granted Rs.7,200/- for the loss of past earning for four months and therefore there is no need to revise the same.

a) Nextly, she argued that medical expenditure is concerned, the claimant underwent treatment in Osmania General Hospital and he was provided free treatment there and therefore he does not deserve any compensation for medical expenditure. She thus argued that compensation awarded under different heads was just and reasonable and there is no need to enhance the same. She 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 lower Tribunal under different heads is just and reasonable or needs reassessment?”

8) **POINT:** The accident, involvement of lorry bearing No.AP 16 TU 9838 and the claimant suffering injuries are not in dispute. The controversy is with regard to the sufficiency of the compensation.

9) On a scrutiny of the facts and evidence, I am of the considered view that compensation awarded under certain heads needs a revisit. The oral evidence of PW.2—the Neuro Surgeon in Osmania General Hospital coupled with Ex.A5—Discharge summary would show that the claimant suffered fracture of right temporal bone and left femur in the resultant accident for which he took inpatient treatment in Osmania General Hospital from 24.01.2007 to 13.02.2007. Needless to emphasize that due to the

aforesaid grievous fractures, the claimant must have suffered unbearable pain. In that view, the compensation of Rs.25,000/- awarded by the Tribunal towards pain and suffering appears to be very meager and hence, compensation is enhanced to **Rs.40,000/-** i.e., @ Rs.20,000/- for each fracture.

a) Then, the Tribunal awarded Rs.7,200/- for loss of past earnings for four months on the premise that the claimant was bedridden for a period of four months after the accident and thus lost his earnings @ Rs.1,800/- per month. This computation in my view is not adequate. As per claimant, he lost his past earnings for a period of six months due to treatment and subsequent bed-rest @ Rs.5,000/- per month. The claimant is a mason by profession and in Ex.A2—charge sheet, the occupation of the claimant, who is shown as LW.2 in memo of evidence, is referred as mason. As such, it is clear that he is a skilled worker. Therefore, his daily income in 2007 can be accepted as Rs.100/- on a modest estimate. The Tribunal erroneously considered him as an agricultural labourer and fixed his monthly income at Rs.1,800/- and hence the same cannot be countenanced. Further, the Tribunal considered the period of treatment and bed-rest as only four months. Having regard to the two grievous fractures suffered by the claimant and his occupation which required manual labour, it can be said that at least for a period of six months he must have refrained from attending his masonry work and thus lost his earnings. So, compensation for loss of past earnings is awarded at **Rs.18,000/-** (Rs.3000/- x 6).

b) Nextly, the Tribunal awarded only Rs.64/- towards medical expenditure of-course basing on medical bill. It is true that, the claimant underwent treatment in Osmania General Hospital, where free treatment was provided to him. It is also true that except Ex.A7, the claimant has not produced any other medical bills. However, his submission is that, he incurred more medical expenditure for purchasing the medicines. Though, in

Government hospitals free treatment is provided, it is common that the patients are sometimes advised to purchase medicines from outside medical shops. Therefore, going by the grievous injuries and treatment underwent by the claimant, a sum of **Rs.5,000/-** is awarded towards medical expenditure.

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

Pain and suffering	Rs.40,000/-
Loss of past earnings	Rs.18,000/-
Transport charges	Rs. 500/-
Extra nourishment and attendant charges	Rs. 4,000/-
Medical expenditure	Rs. 5,000/-

Total:	Rs.67,500/-

So the compensation is enhanced by **Rs.30,736/-** (Rs.67,500/- minus Rs.36,764/-).

- 10) In the result, this M.A.C.M.A, is partly allowed and ordered as follows:
- (i) Compensation is enhanced by **Rs.30,736/-** with proportionate costs and interest @ 7.5% per annum from the date of O.P., till the date of realization against the respondents.
 - (ii) 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