

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1501 of 2009

JUDGMENT:

Aggrieved by the Award dt:09.01.2007 in M.V.O.P.No.471 of 2005 passed by the Chairman, M.A.C.T-cum-IV Additional District Judge, Kurnool (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 03.03.2005 at about 3.30 PM, when he along with some others was travelling in auto bearing No.AP 21 U 7177 on Yemmiganur to Gudur road and when it reached Kallugotla village, 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 thereby the auto turned turtle. The claimant suffered multiple injuries all over the body besides compound fracture to his left leg. Immediately he was admitted in Government Community Hospital, Yemmiganur and thereafter shifted to Gowri Gopal Hospital, Kurnool for better treatment. On these pleas, the claimant filed M.V.O.P.No.471 of 2005 under Sections 140 and 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 jeep and claimed Rs.1,00,000/- as compensation.

- b) R1/owner remained *ex parte*.
- 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 unless the claimant proves that driver of jeep had valid and effective license at the time of accident and insurance policy was in force R2 is not liable to pay compensation. Finally, R2 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. RW1 was examined and Exs.B1 and B2 was marked on behalf of respondents.
- e) The Tribunal on appreciation of both oral and documentary evidence, had awarded Rs.20,000/- as compensation against respondents with proportionate costs and interest @ 7.5% p.a.

Hence, the appeal by claimant.

- 3) The parties in the appeal are referred as they are arrayed before the lower Tribunal.
- 4) Heard arguments of Sri T.Mahender Rao, learned counsel for appellant/claimant and Sri Bathula Venkateswara Rao, learned counsel for respondent No.2/Insurance Company. Though notice sent to R1/owner

was served but there is no representation on his behalf, hence treated as heard.

5) Criticizing the award learned counsel for appellant/claimant vehemently argued that in the resultant accident the claimant suffered fracture of his 1st and 2nd metatarsals of left foot and also lacerations on the face and chest and for all these injuries, he took treatment initially in the Government Hospital, Yemmiganur and later in Gowri Gopal Private Hospital, Kurnool by incurring huge medical expenditure of about Rs.50,000/-. In proof of his injuries, treatment and medical expenditure, he produced Exs.A.3 to A.7 and he also examined PW.2 in proof of his disability and inspite of the aforesaid oral and documentary evidence, the Tribunal committed a grave error in awarding a pittance of Rs.20,000/- as against his claim of Rs.1,00,000/-, that too under a lumpsum method without denoting the headwise allocation of the compensation. He thus prayed to set aside the award and grant suitable compensation by allowing the appeal.

6) Per contra, learned counsel for respondent/Insurance Company supported the award and argued that the compensation awarded was just and reasonable and there is no need to interfere with the same.

7) 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?”

8) **POINT**: The accident, involvement of auto bearing No.AP 21 U 7177 and claimant suffering injuries are not in dispute. Ex.A.3—wound certificate issued by Gowri Gopal Hospital Private Limited, Kurnool would show that the claimant suffered fracture of 2nd and 3rd metatarsals on the left foot besides lacerated wound on his face and chest, for which he took treatment in Gouri Gopal Hospital Private Limited, from 03.03.2005 to 11.03.2005. Ex.A.4 shows that wound debridement and Split Skin Grafting (SSG) was done under General Anesthesia. The claimant produced medical prescriptions and wound certificates under Exs.A.5 and A.6 and he also produced Ex.A.7—photo with negative showing the lacerations over the right cheek, chest and also bandage to left leg and right thigh and right knee. From these documents, it is clear that the claimant suffered grievous injuries and underwent treatment by spending huge amount. It is very pathetic to note that the Tribunal without considering his case in a proper manner and awarding just and reasonable compensation under relevant heads, granted meager amount of Rs.20,000/- as a lumpsum. It should be noted that time and again this Court deprecated the awarding of compensation under lumpsum method by which the Appellate Court will not be in a position to ascertain as to how much amount was awarded under

each head and whether the said award was just and reasonable or not. The instant case is concerned, in view of awarding very meager amount and that too under lumpsum method, this Court is required to reassess the compensation. Having regard to the nature of grievous injuries, the claimant is awarded **Rs.10,000/-** for pain and suffering.

a) The claimant produced medical bills and corresponding prescriptions covering an amount of Rs.30,000/- approximately. It is true that he has not examined the hospital authorities to prove those bills. However, going by the discharge card issued by the Gouri Gopal Hospital and also looking into the Ex.A.7—photo depicting his plight due to injuries, the amount of Rs.30,000/- is considered not a high amount towards medical expenditure and so he is awarded **Rs.30,000/-** towards medical expenditure.

b) Considering that the claimant must have required some assistance during his stay in the hospital and also that he must have required good nourishment to recoup his health, he is awarded **Rs.3,000/- each** under the heads extra nourishment and attendant charges.

c) Having regard to the grievous nature of injuries and treatment, it can be said that the claimant who was a Hamali in Tractor must have abstained from attending his duty for

atleast three months. In such consideration, he is awarded a sum of **Rs.4,500/-** treating his monthly income as Rs.1500/-.

d) The claimant claimed that he suffered disability. To establish the said fact he examined PW.2 who is an Orthopedic Surgeon in Government General Hospital, Kurnool. PW.2 deposed that on physical examination of the claimant and upon taking X-ray he found old fracture of 1st and 2nd metatarsals and fracture of 3rd and 4th toes and also stiffness to his foot. He further stated that the claimant limps while walking. He assessed the disability at 10% partial permanent. In the cross-examination he admitted that he has not treated the claimant in Government General Hospital, Kurnool and he did not issue disability certificate to him. The competency of PW.2 is not disputed. The Doctor claims that upon clinical examination of the claimant he certified his disability as 10% partial permanent. I find no reason to discard his evidence merely on the ground that he did not treat the claimant. Having regard to the 10% partial permanent disability and also considering the nature of his avocation i.e, Hamali work, the compensation for disability is computed as follows. The annual income of the claimant comes to Rs.18,000/- (Rs.1500 x 12). For his age, '15' is selected as multiplier. Thus compensation for disability comes to **Rs.27,000/-** (Rs.18,000 x 15 x 10%).

Thus the total compensation payable to the claimant is

detailed as below:

Pain and suffering	Rs.10,000/-
Medical expenditure	Rs.30,000/-
Attendant charges	Rs. 3,000/-
Extra nourishment charges	Rs. 3,000/-
Loss of earnings	Rs. 4,500/-
For disability	Rs.27,000/-

Total	Rs.77,500/-

Thus the compensation is enhanced by Rs.57,500/-
(Rs.77,500/- minus Rs.20,000/-).

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

- a) The compensation is enhanced by **Rs.57,500/-**
with proportionate costs interest at the rate of 7.5%
p.a from the date of O.P till the date of realization.
- b) Respondent Nos.1 and 2 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: 16.03.2016
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