

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A.NO.3245 of 2009

JUDGMENT:

Aggrieved by the Award dated 20.04.2009 in M.V.O.P.No.743 of 2007 passed by the Motor Accidents Claims Tribunal-cum-X Additional District & Sessions Judge, (FTC) Guntur at Narasaraopet (for short "the Tribunal"), the claimant preferred the instant appeal.

2 a) The factual matrix of the case is thus:

On 14.06.2007 at about 5.30 p.m., when the claimant and some other passengers were proceeding in 3rd respondent's auto bearing No.AP 27W 6518 from Darsi-Gangavaram road and passed East Veeraepalem, the driver of the 1st respondent Indica Car bearing No.AP 27K 4293 drove the car at a high speed in a rash and negligent manner without blowing horn and dashed the auto in the opposite direction, as a result, the claimant and others fell down and received grievous injuries. The claimant sustained grievous injury to spinal cord at his neck. Immediately the claimant was taken to Government Hospital, Darsi and after giving first aid, he was shifted to Government General Hospital, Guntur, where he underwent treatment as inpatient. It is averred that the accident was occurred due to the rash and negligent driving of the drivers of both Indica Car and Auto. On these averments, the claimant filed M.V.O.P.No.743 of 2007 under Sections 140, 141 and 163-A of Motor Vehicles Act, 1988 (for short "M.V Act") against respondents and claimed Rs.2,00,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1/owner of Indica Car filed Counter denying all material averments made in the petition and urged to put the claimant in strict proof of the same.

c) The 2nd respondent-I.C.I.C.I Lambard, Motor Insurance Co. Ltd, which is the insurer of Indica Car, filed counter denying material

averments made in the petition and urged to put the claimant in strict proof of the same. It is contended that there is no negligence on the part of the driver of the Indica Car and negligence, if any, is only on the part of the auto driver, who drove the auto rash and negligently and dashed against the Indica Car, as such the 2nd respondent-insurance company is not liable to pay the compensation.

- d) The 4th respondent-The United India Insurance Company Limited, which is the insurer of Auto, filed counter denying the petitioner averments and put the petitioner to strict proof of the same. It is averred that the accident, if any, has occurred only due to the rash and negligent driving of the Indica Car belonging to the 1st respondent.
- e) During trial, PWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of the claimant. The respondents neither examined any witnesses nor marked any documents.

f) The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.41,000/- with proportionate costs and interest at 7.5% p.a under different heads as follows:

1) For sustaining 15% disability	Rs.36,000/-
2) Pain and suffering	Rs. 2,000/-
3) Conveyance, Special diet and attendant charges @ Rs.1000/- each	Rs. 3,000/-

Total	Rs.41,000/-

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Hence, the appeal by the claimant.

- 3) Heard arguments of Sri N. Subba Rao, learned counsel for appellant/Claimant, Sri Kota Subba Rao learned counsel appearing for the 2nd respondent and Sri Challa Srinivasa Reddy, learned counsel appearing for the 4th respondent.
- 4) The parties in this appeal are referred to as they stood before the Tribunal.

5) Learned counsel for the appellant challenged the quantum of compensation on the ground that the compensation awarded by the Court below is very low. In expatiation, he submitted that the Tribunal awarded only Rs.2000/- towards pain and suffering, though in fact, the claimant suffered 15% disability due to the grievous injuries suffered by him for no fault of him, and therefore, the compensation for pain and suffering needs to be enhanced. Learned counsel further submitted that the Tribunal has not awarded any compensation for loss of past earnings. He would further submit that the claimant underwent treatment in Government General Hospital in Guntur in two spells i.e., from 15.06.2007 to 04.07.2007 and again from 20.08.2007 to 05.09.2007 and due to the injury to spinal cord and in his neck region resulting in restriction of flexion, the claimant could not go for his regular work for about three to four months, and hence, the claimant deserves reasonable compensation for loss of past earnings. The learned counsel further argued that the Tribunal awarded a low amount of Rs.3,000/- for special diet, conveyance and attendant charges in spite of the fact that the claimant underwent inpatient treatment in Government General Hospital, Guntur in two spells, and in that view of the matter, the amount of Rs.3000/- needs to be enhanced. He thus prayed to allow the appeal and enhance the compensation suitably.

6) Per contra, learned counsel for respondents 2 and 4 supported the award and argued that the claim petition is filed under Section 163-A of the Motor Vehicles Act, 1988, and in that context the compensation awarded under differed heads is just and reasonable and does not require any enhancement.

7) In the light of the above rival arguments, the point for consideration is whether the compensation awarded by the Tribunal is just and reasonable or needs any interference.

8) As stated supra, the involvement of Auto bearing No.AP 27W 6518 and Indica Car bearing No.AP 27K 4293 and the injuries

sustained by the claimant are admitted facts. The bone of contention is quantum of compensation. After hearing the arguments of both sides, I am of the considered view that the compensation needs to be enhanced under certain heads.

9) The Tribunal awarded Rs.2,000/- for pain and suffering, which in my considered view is low. Having regard to the fact that the claimant suffered grievous injury to spinal cord in his neck region, which resulted in his taking treatment in Government General Hospital, Guntur in two spells i.e., from 15.06.2007 to 04.07.2007 and from 20.08.2007 to 5.09.2007 and also due to the reason that he suffered restriction of flexion, the claimant must have suffered excruciating pain. Considering the same, the compensation is enhanced from Rs.2000/- to Rs.5,000/-.

10) In view of the fact that the claimant underwent treatment in two spells in Government General Hospital as stated supra, he must have incurred expenditure for extra nourishment, transportation and attendant charges. In that view of the matter, an amount of Rs.3,000/- awarded by the Tribunal is considered to be too low. The same is enhanced from Rs.3000/- to Rs.8,000/-.

11) So far as loss of past earnings is concerned, having regard to the grievous nature of neck injury and the treatment taken by the claimant in two spells, it can be said that the claimant must have remained absent from his regular coolie work at least for a period of three months. Hence, the claimant deserves compensation for loss of past earnings for that period. The Tribunal has taken the annual income of the claimant as Rs.15,000/- p.a. As such, the loss of past earnings for three months comes to Rs.3750/-, which is rounded off to Rs.4,000/-.

12) In the result, this MACMA is partly allowed and ordered as follows:

- (i) Compensation is enhanced by Rs.12,000/- with proportionate costs and interest at 7.5 p.a., from the date

of OP till the date of realisation.

- (ii) The Respondents 2 and 4 are directed to deposit the enhanced compensation amount in the ratio of 50:50 within two 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.

25th February, 2016
Js.