HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.453 of 2009

JUDGMENT:

Dissatisfied with the Award dated 16.01.2003 in MVOP.No.658 of 1999 passed by the Chairman, M.A.C.T-cum-II Additional District Judge, Warangal (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 8.12.1997 at about 9.45 pm when he was returning to his house situated at Kasibugga on his Hero Honda Motor Cycle bearing No. AP 36 B 7794 and when he reached near Ayyappa Servicing Centre at Gopalaswamy Temple, Warangal, a LMV Goods van bearing No. AP 36 T 3409 being driven by its driver in a rash and negligent manner and at high speed dashed behind the claimant, due to which he fell down and sustained multiple injuries all over the body. Immediately the neighbors admitted him in MGM Hospital, Warangal and thereafter shifted to Kamineni Hospital, Hyderabad for better treatment where he underwent surgery. It is averred that the accident was occurred due to rash and negligent driving by the driver of the LMV Goods Van. On these pleas, the claimant filed M.V.O.P.No.658 of 1999 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2 who are the owner and insurer of the offending van and claimed Rs.4,50,000/- as compensation.

b) R1/owner of the vehicle filed written statement denying all the material averments made in the claim petition and urged to put the claimant to strict proof. It denied that the accident was occurred due to rash and negligent driving by the driver of the van and in fact, the accident was occurred due to the negligence of the claimant himself. It further contended that as the van was insured with R.2/Insurance Company it has to indemnify the risk of R.1, if any. Finally, it contended that compensation claimed by the claimant is excessive and exorbitant.

c) R2/Insurance Company filed written statement denying all the material averments made in the claim petition and urged to put the claimant to strict proof. It denied that the accident was occurred due to rash and negligent driving by the driver of the van. It further contended that the accident was occurred due to contributory negligence on the part of the claimant and the van driver. It finally contended that the compensation claimed is excessive and exorbitant and thus prayed to dismiss the O.P

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A55 were marked on behalf of claimant. On behalf of respondents none were examined and Exs.B.1, B.2 and X.1 were marked.

e) The lower Tribunal on appreciation of both oral and documentary evidence, held that accident was occurred on account of rash and negligent driving of the van driver and awarded Rs.2,60,000/- as compensation against respondent Nos.1 and 2 with proportionate costs and interest @ 9% p.a. under different heads as below:

Loss of earnings	Rs. 20,000-00
Transport charges	Rs. 10,000-00
Medical expenses & other expenditure	Rs . 60,000-00
Pain and suffering	Rs. 20,000-00
Permanent disability	Rs.1,50,000-00
Total	Rs.2,60,000-00

Hence, the appeal by the claimant.

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

4) Heard arguments of Sri M. Ravinder, learned counsel for appellant/ claimant, Sri S. Chalapathi Rao, learned counsel for respondent No.1 and Sri S.A.V. Ratnam, learned counsel for respondent No.2.

5a) Challenging the compensation awarded under different heads as meager and unjust, learned counsel for the appellant/claimant firstly argued that the claimant suffered fracture injuries to his right thigh bone, Acetabulum and right clavicle, for which, he underwent treatment in Kamineni Hospital which is a corporate hospital in different spells, by incurring huge medical expenditure of Rs.1,00,000/- and in spite of his producing cogent evidence in the form of medical bills and examining the treatment Doctor—PW.3, the Tribunal awarded a meager amount of Rs.60,000/- alone towards medical and other incidental expenses.

b) Secondly, learned counsel, argued that the claimant suffered 40% of permanent disability to his right leg and thereby he lost his LIC agent job and suffered loss of income in agricultural operations as well as in his poultry but the Tribunal without considering these aspects in a proper perspective awarded low amount of Rs.1,50,000/- towards permanent disability. He further submitted that the Tribunal ought to have computed compensation under multiplier method. Thus, he prayed to allow the appeal and re-assess the compensation.

6) Per contra, learned counsel for 2nd respondent/Insurance Company supported the Award and argued that the claimant though pleaded to have incurred medical expenditure of Rs.1,00,000/- but produced medical bills worth Rs.47,000/- alone. But the Tribunal considering the nature of injuries and the treatment taken by him in Kamineni Hospital, granted a just compensation of Rs.60,000/- and therefore, there is no need to revise the same. He further argued that even though the claimant suffered 40% disability, the yield from agriculture will be the same and only he lost his supervision. Sofaras poultry business is concerned, according to him, he was only a worker in Kakatiya and Subbamma poultry farm and he did not claim as its owner. He has also not produced any record to show that after accident, he was removed from service. Therefore, his alleged loss of income from the poultry need not be taken into consideration. At the outset, though the Tribunal has not computed the compensation for permanent disability under multiplier method, still, it awarded a just compensation of Rs.1,50,000/- and

therefore, the same need not be re-considered. He thus, prayed to dismiss the appeal.

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 re-assessment?”

8) **<u>POINT</u>**: Accident, involvement of Van and the Hero Honda Motor Cycle and the claimant receiving injuries in the accident are not in dispute. The tussle is in respect of quantum of compensation only. The first disgruntlement of the claimant is towards compensation of Rs.60,000/- awarded for medical and incidental expenditure. The Tribunal on appreciation of medical bills filed under different exhibits i.e., Exs.A.14 to A.53, concluded that the entire amount covered under those bills is only Rs.47,129-66 ps. against his claim of Rs.1,00,000/- and ultimately awarded Rs.60,000/- towards medical and other incidental expenses. In my considered view, the said compensation is a meager one. It is an undisputed fact that the claimant suffered three grievous fractures to Acetabulum, fracture of right femur and fracture of right clavicle, for which, he took treatment in a Corporate hospital of the standard of Kamineni Hospital, Hyderabad, in different spells i.e. 09.12.1997, 09.01.1998 and again on 18.11.98 to 23.11.1998 as inpatient besides visiting for check ups as out patient. In that view of the matter and having regard to the high cost of treatment in corporate hospitals, the medical claim of the claimant has to be considered sympathetically despite the fact

that he failed to produce medical bills covering his entire claim. Therefore, the medical and incidental expenditure is enhanced to Rs.**1,00,000**/-.

9) Then coming to disability and consequent loss of earnings, the claimant studied up to B.Com and he worked as LIC agent in Warangal prior to the accident and later he was removed. He also owns agricultural lands. It appears that he did not produce any record about his employment in Kakatiya and Subbamma poultries. According to PW.3, the claimant suffered 40% disability because of shortening of right leg by 2 inches and also due to restriction of the movement of right knee. Obviously, the disability will adversely effect his earning capacity and therefore, he deserves compensation for loss of earning power. Multiplier system is considered to be the best method for computing the compensation. However, the Tribunal granted only lump sump amount of Rs.1,50,000/- towards permanent disability and therefore, compensation needs to be re-visited.

10) As the claimant has not produced any cogent evidence regarding his employment or ownership of poultry farm, the same cannot be considered. Considering that previously he was a LIC agent and he was also having some agricultural lands whose supervision now he is unable to do, his monthly income is fixed at Rs.3,000/- per month. The annual income of the deceased which will serve the purpose an multiplicand, comes to Rs.36,000/-. For his age, ‘17’ is taken as multiplier. Sofaras permanent disability is concerned, 40% suggested by

PW.3 is a physical disability. In terms of functional disability, the same is accepted as 30%. Thus, the compensation for loss of earning power comes to Rs.**1,83,600**/- (Rs.36000 x 17 x 30%). Thus, the total compensation payable to the claimant under different heads is as follows:

Loss of Past earnings	Rs. 20,000-00
Transport charges	Rs. 10,000-00
Medical expenses & other expenditure	Rs. 1,00,000-00
Pain and suffering	Rs. 20,000-00
Permanent disability	Rs.1,83,600-00
Total	Rs.3,33,600-00

So, the compensation is enhanced by Rs.**73,600**/- (Rs.3,33,600/- minus Rs.2,60,000/-.

11) In the result, this MACMA filed by the claimant is partly allowed and ordered as follows:

a) The compensation is enhanced by Rs.**73,600**/- with proportionate costs and interest and the enhanced compensation shall carry interest at 7.5% p.a., whereas the original compensation shall carry interest at 9% per annum from the date of OP till the date of realization.

b) Respondents in the OP are directed to deposit the compensation amount within two months from the date of this Judgment, failing which execution can be taken against them.

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

U. DURGA PRASAD RAO, J

Date: 06.06.2016

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