

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.423 of 2009

JUDGMENT:

Aggrieved by the Award dt:16.08.2004 in O.P.No.987 of 1997 passed by the Chairman, M.A.C.T-cum-I Addl. District Judge at Nizamabad (for short 'the Tribunal'), the claimant preferred the instant appeal.

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

3) The factual matrix of the case is thus:

a) The case of the claimant is that on 16.07.1997 at about 8:30pm, while he was going on the road side in the shivar of Lakkora village, one Jeep bearing No.AP 25 T 4958 being driven by its driver at high speed and in a rash and negligent manner, dashed the claimant and thereby, the claimant fell down and sustained injuries on his forehead, both eyes, legs, hands, back and grievous injuries to the various parts of the body. Then the claimant was shifted to Government Headquarters Hospital, Nizamabad, where he took treatment as inpatient. It is averred that the accident was occurred due to the rash and negligent driving by the driver of the jeep. On these pleas, the claimant filed O.P.No.987 of 1997 under Section 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.1,50,000/- as compensation.

b) R.1 remained *ex parte*.

c) R.2 filed counter denying petition mentioned material allegations and urged to put the claimant in strict proof of the same. Finally R.2 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 A8 and Exs.C.1 and C.2 were marked on behalf of claimant. RW.1 was examined and Exs.B.1 to B.3 were marked on behalf of respondents.

e) The Tribunal, on appreciation of both oral and documentary evidence, had awarded Rs.40,000/- as compensation against respondents with proportionate costs and interest @ 9% p.a. under different heads as below:

Fracture of frontal bone	Rs.15,000/-
Two contusions	Rs. 4,000/-
Pain and suffering	Rs. 5,000/-
Medical and incidental expenditure	Rs. 6,000/-
Loss of earnings	Rs. 4,500/-
For disfiguration	Rs. 5,500/-

Total	Rs.40,000/-

Hence, the appeal by claimant.

4) Heard arguments of Sri K.Venu Madhav, learned

counsel for appellant/claimant and Sri V.Srinivasa Rao, learned counsel for respondent No.2/Insurance Company. R.1 was set *ex parte* before the Tribunal and hence he is not necessary party to the appeal vide cause title.

5 a) Challenging the award, learned counsel for appellant/claimant argued that the compensation awarded under different heads is too meager. Expatiating it, he submitted that the petitioner who is aged 50 years suffered fracture of frontal bone in the resultant accident which is a grievous injury but the Tribunal awarded only Rs.15,000/- for the said fracture injury. He submitted that considering the grievous nature of injury and also the advanced age of the claimant, at which age the chances of union of bone and recovery was tardy, the Tribunal ought to have granted higher compensation. He further argued that the compensation awarded for pain and suffering was also a meager one.

b) Secondly, he argued that the Tribunal granted a low amount of Rs.6,000/- towards medical and incidental expenditure, though the claimant produced medical bills covering an amount of Rs.24,821/-. He submitted that having regard to the grievous nature of injuries and treatment in a private hospital, the Tribunal ought to have awarded the said amount but the same was rejected on the sole ground that the Doctor or the concerned person who issued the medical bills was not examined.

c) Thirdly, he argued that the claimant suffered disfiguration of his face due to fracture of the frontal bone but the Tribunal awarded low amount of Rs.5,5,00/- for the disfiguration which is quite inadequate.

d) Finally, he argued that though the claimant suffered 40% disability, the Tribunal did not award any compensation.

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

6) Per contra, learned counsel for 2nd respondent/Insurance Company supported the award and argued that the compensation awarded under different heads was just and reasonable and there is no need to review the same and he thus prayed to dismiss the appeal.

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

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

8) **POINT:** The accident, involvement of jeep bearing No.AP 25 T 4958 and claimant suffering injuries are all admitted facts. The contention is with regard to the quantum of compensation. On a careful perusal of the facts and evidence, I find some force in the contention of the appellant/claimant to the effect that the compensation awarded under some heads is too low. Exs.A.3 and A.4

coupled with the evidence of PW.2 would show that the claimant suffered fracture of frontal bone besides two contusions around both the eyes. The fracture injury was grievous one whereas the two contusions were simple injuries. The record shows that at first he was treated in the Government Hospital, Nizamabad and later in a private hospital i.e., Thirumala Orthopedic Hospital, Nizamabad. The charge sheet shows that the claimant was 50 years old by the date of accident. Having regard to the grievous nature of injuries and the age at which he suffered those injuries, he deserves just and reasonable compensation. However, the perusal of the award shows that the Tribunal has not awarded adequate compensation in respect of certain heads. For instance, learned counsel for appellant rightly contended that the Tribunal awarded low amount for pain and suffering. As already stated supra, the claimant suffered fracture injuries and two contusions at the age of 50 and so it goes without saying that he must have experienced excruciating pain and suffering with the injuries. In such consideration, the compensation for pain and suffering is enhanced from Rs.5,000/- to **Rs.10,000/-**.

9) Then compensation for fracture injury is concerned, the Tribunal awarded Rs.15,000/-. As rightly argued by learned counsel for appellant, at the advanced age of the claimant, the chances of proper union of the fractured bone are very less. In such consideration, the compensation is enhanced

from Rs.15,000/- to **Rs.20,000/-**.

10) Then medical expenditure is concerned, Ex.A.5— medical bills issued by M/s. Thirumala Orthopedic Hospital, Nizamabad shows that the claimant spent Rs.24,821/-. However, the Tribunal awarded only Rs.6,000/- towards medical and incidental expenditure on the observation that the Doctor or other persons who issued Ex.A.5 was not examined and hence Ex.A.5 cannot be believed and therefore, the claimant can be awarded only a reasonable amount towards medical and incidental expenditure. I am afraid, this approach of the Tribunal is not correct. Admittedly, the claimant suffered a grievous fracture injury to his frontal bone, for which he required treatment for some time. The claimant took treatment in Government Hospital and the evidence of PW.2 shows that he left the Government Hospital during the treatment period. So he must have taken treatment in the private hospital thereafter and must have incurred expenditure. In the light of the grievous injury and other injuries suffered by the claimant, the medical expenditure of about Rs.25,000/- is not an exorbitant amount in these days. Hence, the compensation for medical and incidental expenditure is enhanced from Rs.6,000/- to **Rs.25,000/-**.

11) Then the compensation for disability is concerned, the Tribunal rightly rejected the same because the claimant has

not examined the Doctor who issued Ex.A.6—disability certificate.

Thus the total compensation payable to the claimant is detailed as below:

Fracture of frontal bone	Rs.20,000/-
Two contusions	Rs. 4,000/-
Pain and suffering	Rs.10,000/-
Medical and incidental expenditure	Rs.25,000/-
Loss of earnings	Rs. 4,500/-
For disfiguration	Rs. 5,500/-

Total	Rs.69,000/-

Thus the compensation is enhanced by Rs.29,000/- (Rs.69,000/- minus Rs.40,000/-).

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

- a) The compensation is enhanced by **Rs.29,000/-** with proportionate costs. The enhanced compensation amount shall carry interest at the rate of 7.5% p.a from the date of O.P till the date of realization.
- b) Respondent No.2 is directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against it.

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

Date: 11.03.2016
scs

U. DURGA PRASAD RAO, J