

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.13 of 2009

JUDGMENT:

Aggrieved by the Award dt.02.09.2008 in MVOP No.569 of 2006 passed by the Chairman, M.A.C.T-cum-Judge, Family Court-cum-VIII Additional District Judge, Guntur (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 2.09.2005 the claimant along with another was going on TVS XL Motor Cycle bearing No.AP 7 K 1009 towards Guntur from Nagaralu and when the motor cycle reached near Kalyana Mandapam of Nagaralu at about 12.30 pm, a Tipper bearing No. AP 7 T 5418 being driven by its driver in a rash and negligent manner came in opposite direction and dashed the motor cycle of the claimant. In the resultant accident, he fell on the ground and sustained injuries to his leg. Thereafter, he was shifted to Government General Hospital and from there he was shifted to Sri Venkateswara Nursing Home, Railpet, Guntur, where he underwent treatment as inpatient. It is averred that the accident was occurred due to the fault of driver of the offending Tipper lorry. On these pleas, the claimant filed M.V.O.P.No.569 of 2006 under Section 140 and 163-A of Motor Vehicles Act, 1988 (for short "M.V.Act") and claimed Rs.2,00,000/- as compensation against respondents 1 and 2 who are owner and insurer of the offending tipper.

b) Respondent No.1 remained *exparte*.

c) Respondent No.2/Insurance Company filed Counter denying all the material averments and urged to put the claimant in strict proof of the same. It contended that the Tipper driver was not at fault in the resultant accident and that he was not having valid and effective driving licence at the time of accident and R1 being the owner of Tipper violated the policy conditions, as such it was not liable to pay compensation and prayed for dismissal of the O.P.

d) During trial, PWs.1 to 3 were examined and Exs.A.1 to A.7 and Ex.X.1 were marked on behalf of claimant. No oral and documentary evidence was marked on behalf of respondents.

e) The Tribunal, on appreciation of both oral and documentary evidence, has awarded Rs.58,000/- towards compensation with proportionate costs and interest at 7.5% p.a. under different heads as follows:

Pain and suffering for grievous injuries	Rs.	25,000-00
Pain and suffering for simple injuries	Rs.	02,000-00
Medical Expenses	Rs.	21,000-00
Medicines	Rs.	2,500-00
Extra Nourishment	Rs.	1,000-00
Loss of earnings	Rs.	6,000-00

Total:	Rs.	57,500-00
		(Rounded of to Rs. 58,000-00)

Hence, the appeal by the claimant.

3) The parties in the appeal are referred as they were arrayed before the Tribunal.

4) Heard arguments of Sri G.V.S.Mehar Kumar, learned counsel for appellant/claimant and Sri Pushpinder Kuur, learned counsel for respondent No.2/Insurance Company. Though Notice sent to R.1/owner was served, there is no representation on his behalf.

5a) Learned counsel for appellant/claimant challenged the award on two grounds. Firstly, that the Tribunal erred in not considering Ex.A4—medical bills to full extent which covered an amount of Rs.12,179/- but granted only Rs.2,500/- on the wrong assumption that bills are not genuine, thereby depriving the petitioner of medical expenditure to the actual extent.

b) The second ground which is ofcourse a more severe one is that though PW2—doctor who treated the claimant certified disability at 20%, the Tribunal however, without any reason, refused to accept disability and thereby denied compensation. Learned counsel thus prayed to allow the appeal and enhance the compensation suitably.

6) Per contra, learned counsel for R2/Insurance Company while supporting the award argued that compensation under different heads was meticulously arrived at and hence there is no need to revise 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 enhancement?”

8) **POINT:** Accident, involvement of TVS XL motorcycle bearing No.AP 7 K 1009, tipper bearing No.AP 7 T 5418 and claimant suffering injuries are not in dispute and bone of contention is only quantum of compensation.

a) With reference to first argument of the claimant, of medical bills produced by him under Ex.A4, the lower Tribunal suspected genuinity of some of the bills on the observation that all the bills were generated from the same medical shop i.e. Sri Ragavendra Medical Shop, Kothapeta, Guntur and some bill numbers having larger serial number with prior date than the bills with smaller serial number with later date creating doubt and ultimately the Tribunal awarded only Rs.2,500/- towards medicines. It is true that the doubt expressed by the lower Tribunal cannot be discarded altogether. However, having regard to the nature of the grievous injuries suffered by the claimant and the prolonged treatment underwent by him in a private hospital and also considering that the total bill amount when compared to the nature of injuries suffered by him is not exorbitant one, I am inclined to increase the amount for medicines to Rs.5,000/-.

b) Then coming to second argument, as per the evidence of

PW2 coupled with Ex.X1—case sheet issued by Sri Venkateswara Nursing Home, Railpet, Guntur, the claimant suffered—(i) avulsion of right great toe with exposure of bone and tendons; (ii) pain swelling of left knee and (iii) heel pad avulsion to his right foot for which he was operated on 02.09.2005, 09.09.2005 and 13.10.2005 and wound debridement with K wire and split thickness skin grafting of right great toe and left thigh were done. As per PW2 the claimant being a mason it would be difficult for him to stand for prolonged period to do his job as he is having mild to moderate restriction of left knee joint and restriction of first meta tarsal movement with loss of great toe. With these observations the doctor suggested 20% permanent disability. However, the lower Tribunal in para-11 of its Award, though agreed with the medical evidence that the claimant suffered grievous injuries, but declined to accept the permanent disability. Therefore, it refused to grant any compensation for disability. I am unable to countenance the aforesaid finding of the lower Tribunal. It must be said that lower Tribunal altogether discarded the expert's evidence without there being any contra evidence disproving the finding of the medical expert. The Tribunals must bear in mind that for discarding evidence, particularly expert's evidence, they must give cogent reasons. In the instant case, unfortunately the lower Tribunal at one stroke and that too without any plausible reason rejected the expert's evidence which cannot be accepted. It is to be noted that PW2 considering the mild and moderate restriction of left knee joint

and first meta tarsal and due to the loss of great toe, calculated the disability at 20%. I see no reason to differ with PW2's evidence particularly in the light of the fact that in the cross-examination nothing specific could be extracted and whatever suggestions given to him to the effect that the disability suggested by him was exorbitant was denied. Hence, it is held that claimant deserves compensation for disability which was unduly denied by the lower Tribunal.

c) The disability spoken by PW2 is a physical disability. Considering that claimant is a mason and disability in his lower limb would adversely affect his mason profession, the functional disability can be accepted at 10%, in my considered view. The lower Tribunal accepted his monthly earnings at Rs.2,000/-. The claimant was aged 35 years at the time of accident and for that age, the proper multiplier as per **Smt.Sarla Verma vs. Delhi Transport Corporation**^[1] is '16'. Thus, the compensation for loss of earning power due to disability comes to Rs.**38,400/-** (Rs.2,000/- x 12 x 16 x 10%).

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

Pain and suffering for grievous injuries	Rs.	25,000-00
Pain and suffering for simple injuries	Rs.	2,000-00
Medical Expenses	Rs.	21,000-00
Medicine	Rs.	5,000-00
Extra Nourishment	Rs.	1,000-00

Loss of earnings	Rs.	6,000-00
Loss of earning power due to disability	Rs.	38,400-00
	Total:	Rs. 98,400-00

So, the compensation is enhanced by **Rs.40,400/-** (Rs.98,400/- minus Rs.58,000/-).

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

- a) The compensation is enhanced by **Rs.40,400/-** with proportionate costs and simple interest @ 7.5% per annum from the date of OP till the date of realization.
- b) The 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

Date: 05.08.2016

Scs/Murthy

^[1] 2009 ACJ 1298 (SC)