

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.501 of 2009

JUDGMENT:

Aggrieved by the Award dt.30.04.2003 in M.O.P.No.1782 of 2000 passed by the Chairman, MACT-cum-II Additional District Judge, Visakhapatnam (for short “the Tribunal”) granting compensation of Rs.30,000/- against the claim of Rs.2,50,000/- for the injuries suffered by him in a van accident, the claimant, questioning the compensation as inadequate, preferred the instant appeal.

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

3) Heard arguments of Sri M.Kesava Rao, learned counsel for appellant/claimant and Smt. P.Satya Manjula, learned counsel for R.2/ Insurance Company. Though notice to R.1 was served but there is no representation on his behalf. Case against R.3 was dismissed for default vide Court Order dt.15.12.2008.

4) Criticizing the compensation awarded by the Tribunal as low and unjust, learned counsel for claimant would argue that in the resultant accident, the claimant suffered serious head injury with fracture of frontal bones for which he took inpatient treatment in St.Joseph Hospital, Visakhapatnam for about 20 days and underwent surgery and his injury resulted in disability in the form of loss of memory which was spoken by PW.2—Dr.B.Dibbala Rao and inspite of the aforesaid cogent

evidence regarding the injuries and disability, the Tribunal awarded a niggardly amount of Rs.15,000/- for the fractures and Rs.5,000/- for pain and suffering and the Tribunal did not consider the disability of the claimant at all.

a) Nextly, he would argue that the Tribunal also awarded a meager amount of Rs.10,000/- towards the medical expenditure though the claimant produced Ex.A.11—medical bills for about Rs.67,000/-. He thus prayed to allow the appeal and enhance the compensation suitably.

5) Per contra, learned counsel for Insurance Company while supporting the Award argued that there was no cogent and convincing evidence to show that the claimant suffered any loss of memory, as, inspite of suffering injuries in the accident in the year 1999, he attended his job as MRO till 2002 which would show that he did not suffer any disability on account of the injuries and therefore, the Tribunal rightly did not consider his alleged disability. Learned counsel would further argue that though the claimant produced Ex.A.11—medical bills, most of them were not certified by the Doctor and they were not backed up by proper prescriptions and therefore, the Tribunal did not consider the medical bills but on the other hand, awarded a reasonable amount of Rs.10,000/- towards medicines. Finally, learned counsel argued that the Tribunal awarded high rate of interest @ 9% p.a which needs to be scaled down. Learned counsel thus prayed for dismissal of the appeal.

6) 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?”

7) **POINT**: The accident, involvement of van bearing No.AP 37 U 3522 and scooter of the claimant bearing No.AP 31 P 8310 and claimant suffering injuries etc., facts are not in dispute. The Tribunal awarded compensation under different heads as follows:

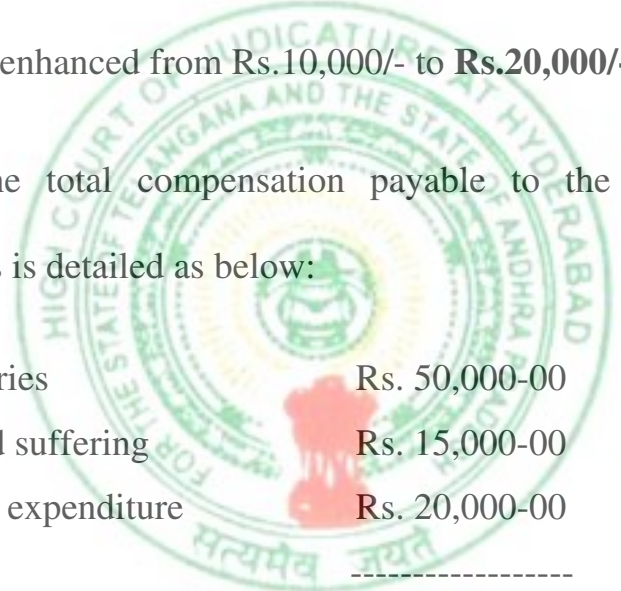
For injuries	Rs. 15,000-00
Medical expenditure	Rs. 10,000-00
Pain and suffering	Rs. 5,000-00
Total	Rs. 30,000-00

8) On a careful scrutiny of the entire evidence on record, I am of the view that the compensation is on low side. PW.2—Dr.B.Dibbala Rao, Consultant Neuro Surgeon in St. Joseph Hospital, Visakhapatnam, where the claimant underwent treatment from 08.10.1999 to 28.10.1999, deposed that on 08.10.1999 he happened to examine the claimant and found him with serious head injury on the left frontal bone with a depressed fracture and contusion of the left frontal lobe; the brain was also lacerated and there were blood clots around the injury to the brain; after initial observation for 48 hours, the patient was operated on 11.10.1999 and he was treated in the intensive care unit and discharged on 28.10.1999; at the time of discharge he was conscious but was having

residual speech and memory disturbance; the patient was put on medication for prevention of convalescence and for improving the speech of memory. The above evidence of PW.2 was not much tested in the cross-examination. Thus, his evidence would show that the claimant suffered severe head injury on the left frontal bone with a depressed fracture and contusion on the left frontal lobe for which he was treated as inpatient for about 20 days and operated upon. Thus, the grievous nature of injuries and treatment are evident. So far as the disability in the form of loss of memory as spoken by PW.2 is concerned, the same cannot be considered since neither PW.2 gave any percentage of disability nor the claimant has separately obtained the disability certificate from Medical Board in proof of the alleged partial permanent disability. On the other hand, the claimant in his cross-examination admitted that his superannuation was in November, 2003 and till the date of his evidence i.e, 14.02.2002 he was in service as MRO. In that view of the matter, it can be said, whatever little amount of loss of memory he might have suffered, had not come in his way to perform his day-to-day activities. Hence, the lower Tribunal rightly did not consider his disability. However, in my considered view, the Tribunal has not adequately compensated for the grievous injuries. It should not be forgotten that the claimant has suffered grievous injuries to his head which is the main organ of a man. In that view of the matter, the compensation of Rs.15,000/- for fracture injuries and Rs.5,000/- for pain and suffering can be said as quite low and a pittance. Therefore, the compensation for

fracture injuries is enhanced from Rs.15,000/- to **Rs.50,000/-**. Similarly, compensation for pain and suffering is also enhanced from Rs.5,000/- to **Rs.15,000/-** considering that due to head injury, he might have experienced excruciating pain. Sofaras medical expenditure is concerned, though the Tribunal cannot be found fault for not awarding the full amount as covered by Ex.A.11—medical bills, but at the same time having regard to the grievous nature of injuries and length of the treatment underwent by the claimant in a private hospital, the said amount can be said to be a low one. In that view of the matter, medical expenditure is enhanced from Rs.10,000/- to **Rs.20,000/-**.

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



For injuries	Rs. 50,000-00
Pain and suffering	Rs. 15,000-00
Medical expenditure	Rs. 20,000-00

Total	Rs. 85,000-00

So, the compensation is enhanced by **Rs.55,000/-** (Rs.85,000/- minus Rs.30,000/-).

9) It may be noted that learned counsel for Insurance Company argued that the Tribunal awarded a high rate of interest @ 9% p.a which needs to be scaled down. But I am not disturbing the said rate of interest for the period from the date of filing the O.P till the date of Award since the Insurance Company has not challenged the same by filing an appeal

or cross-objections. However, considering its request, the subsequent rate of interest is fixed @ 7.5% p.a.

10) In the result, this appeal is partly allowed with costs and ordered as follows:

- (i) The compensation is enhanced from **Rs.30,000/-** to **Rs.85,000/-** with proportionate costs. The said compensation of Rs.85,000/- shall carry interest @ 7.5% p.a. from the date of Award till the date of realisation, but it shall carry interest @ 9% p.a from the date of O.P till the date of Award.
- (ii) Respondents in the O.P 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: 09.09.2016

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