HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.Nos.1365 of 2011 and 3061 of 2014

COMMON JUDGMENT:

MACMA Nos.1365 of 2011 and 3061 of 2014 are preferred by the Insurance Company and claimant respectively aggrieved by the award dated 14.07.2010 in O.P.No.2075 of 2007 passed by the Chairman, MACT–cum–VII Metropolitan Sessions Judge, Hyderabad (for short 'the Tribunal').

2) The factual matrix of the case is thus:

a) Petitioner's claim is that on 25.05.2007 at about 7.10 AM, when he along with his daughter was proceeding on motorcycle bearing No.AP 29 D 7458 from his residence to Annibesant College, on the way when they reached Gaddiannaram cross-roads, a college bus bearing No.AP 11 W 7808 belongs to 1st respondent—society came at high speed in a rash and negligent manner and dashed behind the motorcycle, thereby the claimant and his daughter fell down on the road and bus ran over the claimant's left leg, due to which he sustained fracture injuries all over the body. Immediately he was shifted to Yashoda Hospital, Malakpet, Hyderabad where his leg was operated repeatedly and he suffered disability. With these averments, he filed O.P.No.2075 of 2007 and claimed Rs.23,23,348/- as compensation against respondents 1 and 2 who are the owner and insurer of the offending bus.

b) R1 remained *ex parte*.

c) R2/Insurance Company filed counter denying all the material averments made in the claim petition and urged to put the claimant to strict proof. It contended that accident was occurred due to negligence of the claimant himself and there was no negligence on the part of bus driver. The amount claimed was highly excessive and exorbitant and thus prayed to dismiss the OP.

d) PWs.1 to 4 were examined and Exs.A1 to 184 and Ex.X1—identity card were filed on behalf of claimant and Ex.B1—policy copy was marked on behalf of respondents.

e) The lower Tribunal on appreciation of both oral and documentary evidence held that accident was occurred on account of rash and negligent driving by the driver of the bus and awarded Rs.8,45,419/- under different heads against respondents 1 and 2 as below.

Loss of amenities due to 15% disability	Rs.	5,97,870.00
Loss of income due to loss of earned leave	Rs.	52,719.00
Medical expenditure	Rs.	82,830.00
Future medical expenses	Rs.	1,00,000.00
Transportation	Rs.	7,000.00
Extra nourishment	Rs.	5,000.00
Total	Rs.	8,45,419.00

Challenging the award the Insurance Company filed MACMA No.1365 of 2011 and claimant filed MACMA No.3061 of 2014.

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

4a) **<u>M.A.C.M.A.No.1365 of 2011</u>**: Heard arguments of Sri Ravi Shankar Jandhayala, learned counsel for appellant/Insurance Company in MACMA No.1365 of 2011 and R2 in MACMA No.3061 of 2014. Though notice to R2 was served, there was no representation on his behalf, hence treated as heard.

b) **<u>M.A.C.M.A.No.3061 of 2014:</u>** Heard arguments of Smt.B. Anuradha, learned counsel for appellant/claimant in MACMA No.3061 of 2014 and R1 in MACMA No.1365 of 2011. R1 is not necessary vide cause title.

5a) Challenging the award, learned counsel for claimant would firstly argue that though the claimant claimed Rs.2,30,171/- for loss of income due to loss of leave, the lower Tribunal awarded a paltry sum of Rs.52,719/-. She would submit that evidence of PW4 would clearly show that though the petitioner did not suffer loss of salary, however, due to loss of leave credit the petitioner lost an amount of Rs.2,30,171/- which could have been credited to him at the end of his service. Hence, compensation needs to be revised. In that regard, she relied upon the judgment of the High Court of Delhi in ***Ramveer Singh v. Rajesh Kumar***[1].

b) Secondly, learned counsel argued that against the claim of Rs.3,12,172/- for medical expenses, the tribunal arrived at Rs.2,55,798/- and deducted therefrom Rs.1,72,968/- which was reimbursed, and awarded the balance amount of Rs.82,830/- only on an erroneous assumption that since the authorities reimbursed Rs.1,72,968/-, the claimant does not

[1] 2014 ACJ 1090

deserve the said amount. Learned counsel would vehemently argue that merely because the employer has reimbursed the medical expenditure to the claimant, the tortfeasor cannot be extended *pro tanto* benefit. In that regard, she relied upon the decision in ***National Insurance Company Limited vs. Aman Kapur***[2].

c) Nextly, learned counsel would argue that Tribunal committed a grave error in not awarding the claimed amount of Rs.5,40,000/- towards future transportation charges. She would submit that claimant was left with 9 years service and due to permanent disability to his left leg, he could neither ride scooter nor use public transport and necessarily he has to engage auto every day to attend his office. Therefore, the said claim was made but it was unduly declined by the Tribunal. Learned counsel thus prayed to allow her appeal and dismiss other appeal.

6a) In oppugnation, Sri Ravi Shankar Jandhayala, learned counsel for Insurance Company would firstly argue that in this case though claimant suffered 15 to 20% disability, that did not result in loss of job or loss of earnings, as admittedly, he has been in the service and getting the salary. In that view of the matter, the claimant was entitled to a reasonable amount only for loss of amenities but not loss of income. However, the Tribunal by applying multiplier method wrongly awarded Rs.5,97,870/-. Hence, the said amount has to be deducted from the compensation.

b) Nextly, challenging the compensation of Rs.82,830/- awarded for medical expenses, he would submit that Tribunal ought not to have

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[2] 2014 ACJ 1342

awarded the said amount also as the claimant is entitled to full reimbursement but his department partial reimbursement. In the similar lines, learned counsel further argued the Tribunal ought not to have awarded Rs.1 lakh for future medical expenses because he will be entitled to reimbursement in that regard also. He thus prayed to allow the appeal filed by the Insurance Company and dismiss the other appeal.

7) The point for determination is:

"Whether the compensation awarded by the lower Tribunal is just and reasonable or needs reassessment?"

8) **POINT**: The claimant's appeal is concerned, the first contention is with regard to loss of leave salary. As per Ex.A172, the petitioner applied

i) Half pay leave from 25.05.2007 to 20.11.2007 (five months and 25 days)
ii) Earned Leave from 21.11.2007 to 16.01.2008 (one month and 26 days)

The evidence of PW4 is that though the petitioner did not suffer any loss of salary, still due to loss of leave credit he lost Rs.2,30,171/- which could have been credited to his account at the end of the service. This statement is only partially correct. As rightly observed by the lower Tribunal, half pay leave on medical ground is not a reimbursable leave at the end of the service. Only earned leave will be credited to the account of a Government employee and it will be reimbursed on his superannuation. Hence, the lower Tribunal granted Rs.52,719/- for the loss of earned leave of one month 26 days. The claimant cannot have any grievance in that regard.

9) In ***Ramveer Singh***'s case (1 supra) the petitioner therein underwent leave for about 17 months due to accident on loss of pay. In stead of awarding full compensation for loss of his pay, the Tribunal awarded a lumpsum amount of Rs.50,000/- which was impugned by the High Court of Delhi. That is not the case here. PW4 emphatically stated petitioner has not suffered any loss of salary. What the claimant ultimately suffered was earned leave of one month and 26 days which could have been credited to his account and paid at the end of his service. The Tribunal aptly compensated him proportionately.

10) The next contention is with regard to medical expenditure. While it is argued by the claimant that in spite of reimbursement made by the Government, Insurance Company is liable to pay the amount of Rs.1,72,968/- to him, the Insurance Company in turn would argue that claimant is entitled to full reimbursement and he showed only partial reimbursement therefore, he does not deserve the balance amount of Rs.82,830/- also. It must be said neither side argument is correct. Basing on the oral and documentary evidence the Tribunal has rightly arrived at Rs.2,55,798/- and considering the evidence of PW4 to the effect that Rs.1,72,968/- was reimbursed, awarded the balance amount of Rs.82,830/-. Since the claimant had already got medical reimbursement to a tune of Rs.1,72,968/-, he cannot claim that amount. Strictly speaking the Tribunal ought to have awarded the said amount of Rs.1,72,968/- against the Insurance Company and ought to have directed the same to be remitted to the account of Government. Any how, since the claimant is claiming that

amount for himself, the same cannot be ordered which would amount to double benefit to the claimant.

11) Then, so far as awarding future medical expenditure of Rs.1 lakh is concerned, the contention of Insurance Company is that since the claimant is entitled to reimbursement, the Tribunal ought not to have tagged that expenditure to the Insurance Company. This contention is quite far-fetched. The future medical expenditure is necessitated because of future surgery due to accident. Therefore, the Insurance Company has to bear that expenditure.

12) The next contention of the claimant is that Tribunal erred in not granting future transportation charges of Rs.5,40,000/- whereas the contention of the Insurance Company is that the Tribunal erred in awarding Rs.5,97,870/- towards loss of amenities by applying multiplier method. Thus, the two contentions can be answered conjunctively. So far as awarding Rs.5,97,870/- is concerned, the Tribunal while observing that though the petitioner has not sustained any loss of income due to disability of 15 to 20%, still he suffered loss of amenities in his life, applied multiplier method and arrived Rs.5,97,870/- (Rs.25,500/- x 12 x 13 x 15/100). As rightly contended by the Insurance Company, the multiplier method will be applied only when there is loss of income due to death or disability caused to the victim of the accident. In this case, the claimant though suffered permanent disability and consequent loss of amenities in

life, did not suffer any loss of income. In that view, the Tribunal was wrong in applying multiplier method.

13) Be that as it may, coming to the future transportation charges, the Tribunal denied the claim of Rs.5,40,000/- on the observation that in the evidence of PW2 he did not disclose that the petitioner cannot use any public transport facility or he cannot drive the scooter after accident. I am afraid, the above observation is wrong. According to PW2, the claimant suffered 15 to 20% permanent disability and he has to use supporting stick for walking/working for the rest of his life. That is the plight of the claimant who was aged about 49 years by the time of accident. He was left with 9 years service by then. Since he has to use a stick for walking/working, it is common knowledge that he cannot dare to ride two wheeler in a heavy vehicular traffic city like Hyderabad to attend his office. It will be also difficult for him to commute with public transportation buses. Therefore, though PW2 did not specifically depose in that regard, still the circumstances would depict that claimant has to depend on auto service. Therefore, he deserves a reasonable compensation in this regard. Therefore, in the interests of justice, the compensation of Rs.5,97,870/- awarded by the Tribunal can be suitably converted under two heads i.e. Rs.**2 lakhs** towards loss of amenities and balance amount of Rs.**3,97,870/-** towards future transportation charges.

Thus, the total compensation awarded under differed heads is detailed as below:

Loss of amenities	Rs.	2,00,000.00
Loss of income due to loss of earned leave	Rs.	52,719.00
Medical expenditure	Rs.	82,830.00
Future medical expenses	Rs.	1,00,000.00
Transportation	Rs.	7,000.00
Extra nourishment	Rs.	5,000.00
Future transportation charges	Rs.	3,97,870.00
Total	Rs.	8,45,419.00

14) In the result, MACMA No.1365 of 2011 filed by the Insurance Company and MACMA No.3061 of 2014 filed by the claimant are dismissed. No costs in both the appeals.

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

U. DURGA PRASAD RAO, J

Date: 13.06.2017
Murthy