

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA
PRADESH**

M.A.C.M.A. No. 500 of 2014

Between:

Guthikonda Venkata Appa Rao

.....Appellant

AND

1. Matta Yesuratnam s/o Subba Rao, and 5 others

.....Respondents

Date of Judgment pronounced on : 31.10.2017

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes / No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes / No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes / No

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 500 of 2014

% 31.10.2017

Guthikonda Venkata Appa Rao

.... Appellant

Versus

\$ 1. Matta Yesuratnam s/o Subba Rao,
and 5 others

..... Respondents.

< **GIST:**

> **HEAD NOTE:**

! Counsel for the Appellant : Mohd. Yousuf

^ Counsel for the Respondents : K. Subba Rao

? **Cases referred**

¹ (2009) 6 SCC 121

² 2008 ACJ 2041

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 500 of 2014

JUDGMENT:

This appeal is arising out of the Order and Decree dated 06.09.2011 passed in M.V.O.P.No.1096 of 2009 by the Chairman, Motor Accidents Claims Tribunal (II Additional District Judge) Eluru. The appellant is the petitioner, and the respondents are respondents in the aforesaid original petition. For the sake of convenience, the parties will be referred to as they were arrayed in the original petition before the Tribunal.

2. The petitioner has filed claim petition M.V.O.P.No.1096 of 2009 claiming compensation of Rs.6,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 21.06.2008 while he was boarding the motorcycle of his friend as pillion rider, and an Ambassador Car bearing No. AP 9V 0666 coming in opposite direction dashed the motorcycle. The Tribunal has awarded compensation of Rs.3,77,000/- under various Heads. Seeking enhancement of compensation, the petitioner filed this appeal.

3. Heard the learned counsel for the appellant-petitioner, and respondents. Perused the material on record.

4. The point arising for consideration is whether the petitioner is entitled for enhancement of compensation.

5. Learned counsel for the petitioner submits that the Tribunal has not awarded compensation adequately for the disability suffered by the petitioner. It is submitted that the medical officer PW2 has stated in his evidence that the petitioner has suffered 60% disability, whereas the Tribunal has taken the disability as 30%. It is argued that the petitioner is aged about 45 years and he was doing real estate business and because of the fracture injury to his tibia and fibula, he is unable to attend his business activities efficiently and the Tribunal has not considered the functional disability and, therefore, sought for enhancement of compensation. It is also submitted that the interest awarded by the Tribunal at 6% per annum is on lower side.

6. Learned counsel for the respondents submitted that the Tribunal has rightly taken into consideration the disability as 30% basing on the evidence of the medical officer PW2 who has stated in his cross examination that on loss of one limb, 50% disability has to be taken and since this is a case of a fracture to one leg, the Tribunal has rightly taken the disability as 30%.

7. The petitioner is aged about 45 years and he was doing real estate business. Admittedly, the petitioner has suffered compound comminuted fracture right Tibia, for which external fixation and minimal internal fixation was done and the petitioner was unable to do hard labour activities. According to the testimony of PW2, the petitioner has suffered 50% disability. However, in his cross examination PW2 stated that for loss of one limb, 50% disability has to be taken into consideration. It is pertinent to note that in the cross examination, PW2 stated that at the time of issuing the disability certificate, he did not notice any inconvenience suffered by the petitioner. It is revealed in the cross examination that while issuing the disability certificate, the medical officer had not noted any inconvenience suffered by the petitioner.

8. The evidence of the medical officer PW2 clearly reveals that the petitioner has suffered disability of 60% but he has not mentioned in the disability certificate as to the inconvenience suffered by the petitioner. Therefore, on consideration of the medical evidence, the age and occupation of the petitioner-appellant, it would meet the ends of justice, if the functional disability is taken into consideration, and accordingly the disability is enhanced from 30% to 50%.

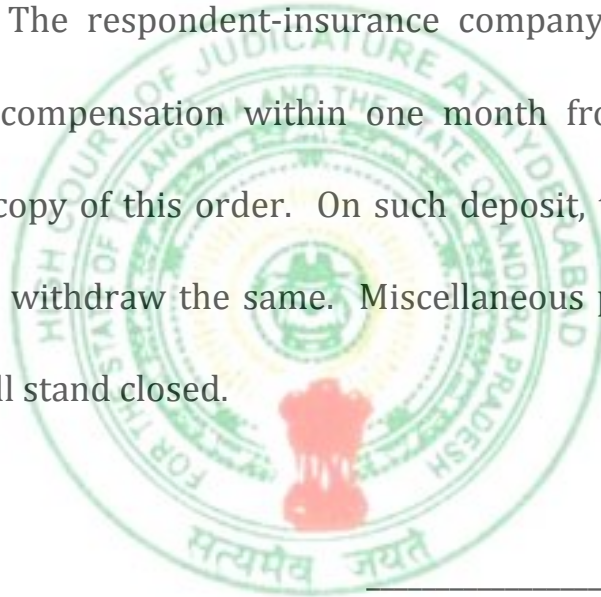
9. As far as the income of the petitioner is concerned, the Tribunal has taken the notional income as Rs.3,000/- per month which does not require any interference. On account of permanent disability of 50%, the loss of earnings would be Rs.1,500/- per month. As per **Sarla Verma v. Delhi Transport Corporation**¹, the multiplier applicable to the age of the petitioner, who was 45 years old by the date of accident, would be '15'. And, therefore, the total loss of earnings would come to $\text{Rs.1,500} \times 12 \times 15 = \text{Rs.2,70,000/-}$. The compensation of Rs.30,000/- awarded by the Tribunal towards pain and suffering; and Rs.1,75,000/- towards medical expenses; and Rs.10,000/- towards future expenditure for removal of implants, does not require any interference. However, in view of the decision of the Hon'ble Supreme Court in **Dharampal v. U.P. State Road Transport Corporation**², the interest can be enhanced from 6% per annum to 7.5% per annum from the date of petition till realisation. Therefore, on consideration of the evidence on record, the award passed by the Tribunal is enhanced as shown in the following tabular format.

S.No	Head	Compensation awarded by the Tribunal	Compensation enhanced
1.	Pain & Suffering	Rs.30,000/-	Rs.30,000/-

¹ (2009) 6 SCC 121
² 2008 ACJ 2041

2.	Loss of earnings due to 50% disability	Rs.1,62,000/-	Rs.2,70,000/-
3.	Medical expenses	Rs.1,75,000/-	Rs.1,75,000/-
4.	Future expenses for removal of implants	Rs.10,000/-	Rs.10,000/-
	Total	Rs.3,77,000/-	Rs.4,85,000/-

10. **IN THE RESULT**, the appeal is partly allowed by awarding compensation of Rs.4,85,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation. The respondent-insurance company is directed to deposit the compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. Miscellaneous petitions, if any pending, shall stand closed.



GUDISEVA SHYAM PRASAD, J

31st October, 2017

KSM

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



M.A.C.M.A. No. 500 of 2014

31st October, 2017

KSM