

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 1447 OF 2005

JUDGMENT:

The appellant herein filed OP Nos. 405 and 404 of 1994 before the Motor Accident Claims Tribunal-cum-I-Addl. District Judge, Cuddapah under Sections 166 and 140 of the Motor Vehicles Act claiming compensation of Rs.1,00,000/- under fault liability and Rs.12,000/- under no-fault liability respectively. The Tribunal allowed both the OPs by passing a common order dated 8.7.1998. Aggrieved by the order passed by the Tribunal in OP No. 405 of 1994, the claimant in the said OP has filed the present appeal seeking enhancement of compensation.

The facts and circumstances which made the claimant to file the above mentioned claim petitions as narrated by him in his pleadings are stated briefly as under,

That on 28.11.1993 while the appellant and some others were proceeding to Kurnool in a jeep and at about 3.00 A.M., when the jeep reached near Yekopalle Zillella, the lorry bearing No. AAT 4911, owned by the 1st respondent and insured with the 2nd respondent, came in its opposite direction in a rash and negligent manner and gave a hit to the jeep and as a result of which, the jeep turtled and the appellant sustained grievous injury to his head. Soon after the accident the appellant was taken to a hospital at Mydukur and there he was provided with first-aid, and from there he was taken to Government General Hospital, Kurnool where he underwent an operation for the head injury. The appellant became mentally unsound on account of the head injury and could not be

able to speak coherently. The appellant's further contention is that he is unable to attend to agricultural operations which he was doing prior to the accident and was getting income of Rs.60,000/- per annum.

The appellant examined himself as P.W.1, apart from examining Dr. N. Ashok Kumar who treated him as P.W.2 and got marked Exs.A1 to A9 to prove his case.

The appellant's main contention is that the Tribunal though believed the evidence of P.W.2 who was a Neurosurgeon and spoke about his sufferance from chronic organic brain syndrome due to *head injury* as to his incapability to speak coherently and that the injury caused to head resulted in permanent disability of 25% and assessed the loss of earnings at 1,48,100/-, awarded the compensation of Rs.1,00,000/- only and that the compensation so awarded was not just and reasonable. Under these circumstances, there is need to order for setting aside the order of the Tribunal and pass an appropriate order by granting a reasonable compensation taking into consideration of his inability to speak etc.

I have perused the order passed by the Tribunal. It is evident from the material on record that the appellant had filed two claim petitions, one under *no-fault liability* and another under Section 166 of the Motor Vehicles Act for *fault liability*. The Tribunal has allowed both the claim petitions awarding compensation of Rs.12,000/- under no-fault liability and Rs.1,00,000/- under fault liability, as evidence is there in the record to believe that the appellant is suffering from disability of 25% due to the head injury which is of permanent in nature and even though the Tribunal has noticed substantial material to hold that the claimant is entitled to get

a sum of Rs.1,48,100/- as compensation, it has awarded a sum only Rs.1,00,000/- which is inclusive of the claim under no-fault liability. The Tribunal ought to have awarded compensation under no-fault liability separately instead of making it as part of the compensation claimed in OP No. 405 of 1994.

The appellant has made a mention in the appeal grounds that the compensation needs to be enhanced to Rs.1,67,000/- in OP No. 404 of 1994. But the value of the appeal mentioned in the appeal is only Rs.12,000/-. Such claim seems to have been made by the appellant on the contention that the compensation under fault liability is to be awarded separately. The grounds urged by the appellant in the memorandum of appeal are not consistent. The appellant is not sure as to the relief which actually he intends to seek. At one place, it is contended by him that he is entitled to get Rs.1,48,100/- as compensation and at another place it is contended that the compensation amount is to be enhanced to Rs.1,67,100/- from Rs.1,00,000/-, but having made such assertions, he has mentioned the value of the appeal as Rs.12,000/-.

The Tribunal by relying upon the evidence given by P.W.2, the medical officer under whom the appellant has taken treatment has come to the opinion that the head injury sustained by the appellant in the accident resulted the disability of 25%. Since the petitioner is an agriculturist, the Tribunal has roughly assessed his loss of earnings at Rs.10,000/- per annum and assessed the loss of earnings at Rs.1,48,100/-. The Tribunal has also estimated the medical expenditure conservatively at Rs.3,000/- and attendant charges at Rs.3,000/- and

Rs.1,000/- towards transport charges etc. The Tribunal having come to the above mentioned conclusion has found that the reasonable compensation was claimed by the appellant in OP No. 405 of 1994. Since there is no unreasonability as such in the claim by the appellant, the Tribunal has allowed his claim in toto in OP No. 405 of 1994 and therefore nothing survives for the appellant to make an appeal against the said order passed by the Tribunal. The appeal filed by the appellant also fails for another reason that he has made inconsistent pleas in the appeal grounds under the wrong presumption that no separate compensation is awarded in OP No. 404 of 1994 which he has filed under no-fault liability, though, in fact, the said claim petition is also allowed in toto by awarding Rs.12,000/- as claimed by him.

In the result, the appeal is dismissed. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

Dt.7.4.2017
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