

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2002 OF 2005

JUDGMENT:

This appeal is filed by the claimant in MV OP No. 1066 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Kurnool with the only contention that reasonable compensation has not been awarded by the Tribunal, the claimant in the above mentioned OP has come before us.

The appellant filed a claim petition under Sections 163-A and 166 of the Motor Vehicles Act against respondents 1 to 4 claiming compensation of Rs.5,00,000/- for the injuries sustained by him in a motor accident. It is averred in the claim petition by the appellant that he was aged about 32 years by the date of the alleged accident and was working as a labourer under third respondent on payment of wages of Rs.60/- per day. On 26.4.2002 while the appellant was transporting water cans in a van bearing No. AP 13 V 1470, owned by the third respondent and insured with the four respondent, from Pacharla village to Gajulapalli, when the van reached near Pacharla, a jeep bearing No. ABL 3839, owned by the first respondent and insured with the second respondent, came in his opposite direction in a rash and negligent manner with high speed and hit the van on its right side, due to which the appellant received crush injury to his right upper hand. He took treatment as in-patient in Government Hospital, Nandyal from 26.4.2002 to 22.5.2002, his right hand was amputated upto elbow. He spent an amount

of Rs.20,000/- for medical and attendant expenditure and lost his total income of Rs.1,800/- per month. The appellant became disabled permanently on account of removal of his right upper arm upto elbow and unable to do any work.

The respondents 1 and 3 did not choose to contest the claim petition. The respondents 2 and 4-insurance companies of both vehicles involved in the accident alone filed their counters denying the averments made in the claim petition. The contention of the second respondent is that the accident occurred due to the rash and negligent driving of the van bearing No. AP 13 V 1470 by its driver, whereas according to the fourth respondent, the accident occurred due to the rash and negligent driving of the jeep bearing No. ABL 3839 by its driver.

In the course of the enquiry, the appellant examined himself as P.W.1 and the doctor who treated him was examined as P.W.2 and the certified copies of FIR, wound certificate, charge sheet, judgment, another medical certificate and out-patient chit were marked as Exs.A1 to A6 respectively by the appellant. The second respondent examined its Senior Assistant as R.W.1 and copies of insurance policy in respect of both van and jeep were marked as Ex.B1 and B2 respectively.

The Tribunal, on appreciation of the oral and documentary evidence available in the case record, held that the accident occurred due to the rash and negligent driving of the jeep bearing No. ABL 3839, owned by the first respondent and insured with the second respondent and awarded a total compensation of Rs.2,52,320/- together with interest @ 9% per annum from the date of petition till realization and accordingly

fastened the liability on the respondents 1 and 2, while exonerating the liability of respondents 3 and 4 who are owner and insurer of the van bearing No. AP 13 V 1470. There is no quarrel about the facts of the case and also about the liability fixed on the respondents 1 and 2 to pay the compensation.

Having felt that the compensation awarded by the Tribunal is not just and reasonable, the claimant in MVOP No. 1066 of 2002 has filed the present appeal. His principal contention is that due to the occurrence of the accident he is put to suffer throughout his life and on account of the amputation of his right upper arm upto elbow he is not able to do any work. Though loss or damage suffered by him on account of amputation of his right hand upto elbow cannot be compensated in terms of money, and despite the Tribunal is conferred with the power of awarding reasonable and adequate compensation taking into consideration of his disability at 100% so far as the loss of right upper arm upto elbow is concerned, it has awarded the compensation of Rs.2,52,320/- which is not reasonable and adequate.

The appellant was aged 32 years by the date of the accident and due to his involvement in the accident which he has not expected and anticipated, he is put to untold agony and loss or damage which has caused to him, which cannot be compensated in terms of money. He has laid the claim for compensation of Rs.5,00,000/-. The Tribunal, though has got the power of awarding reasonable compensation, has awarded a sum of Rs.2,52,320/-. There is no dispute so far as the fact that the appellant's right upper arm upto elbow was amputated and on account of

loss of right upper arm, he has to suffer throughout his life. Considering the fact that the disability which the appellant is having is perennial in nature, and other circumstances that he cannot attend to any work virtually on account of loss of his right upper arm upto elbow and he cannot feed for himself, this Court is of the view that the compensation awarded by the Tribunal needs to be enhanced.

Accordingly this Court hereby enhances the compensation amount to Rs.3,00,000/- (Rupees Three Lakhs only) from Rs.2,52,320/-. The enhanced compensation is payable by the respondents 1 and 2 jointly and severally. The enhanced compensation amount carries an interest @ 7.5% per annum from the date of petition till the date of realization. On deposit, the petitioner is entitled to withdraw the enhanced compensation amount along with accrued interest.

The award passed by the Tribunal is modified to the extent indicated above. The appeal is allowed in part. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt. 3.3.2017
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