

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. Nos. 3511 of 2005 and 120 OF 2006

COMMON JUDGMENT:

1. M.A.C.M.A.No.3511 of 2005 and M.A.C.M.A.No.120 of 2006 are preferred by the injured and the insurance company respectively against the judgment, dated 29.08.2005, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal'), in O.P. No.145 of 2002 vide award.

2. For convenience of reference, the parties are hereinafter referred to as injured and insurer for disposal of the appeals.

3. The brief facts of the case are that, on 08.01.2002, while the injured was returning to his house along with his friend – Shantilal on their cycles and when they reached near Suryodaya School, Nizamabad, the tractor bearing No.AP 25/G 1058 came from their rare side dashed the cycle of the injured and he fell down and the tractor ran over his legs and hands. As a result, he received grievous injuries and crushed fractures to his left arm, right leg and injuries to abdomen and other parts of the body. The injured was shifted to Deepa Orthopedic Hospital, Khaleelwadi, Nizamabad, where he undergone treatment under Dr. Ramulu, Orthopedic Surgeon. During the course of treatment, the left upper limb and right leg of the injured were amputated. The injured was aged about 25 years and was working as Hamali earning Rs.6,000/ per month. Police registered a case against the driver of the tractor for rash and negligent driving. The injured filed O.P.No145 of 2002

before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.10,00,000/- for the Injuries sustained by him in the motor vehicle accident.

4. Respondent No.1, owner of the tractor, filed his written statement denying the manner in which the accident has occurred and also the alleged rash and negligent driving of the driver of the tractor. The insurance company denied its liability and also disputed the quantum of compensation claimed by the injured as excessive.

5. The Tribunal, on consideration of the pleadings and evidence of witnesses PWs.1 and 2, and the documents Exs.A-1 to A-10 and Ex.C.1, passed the Award granting compensation of Rs.4,97,600/- with proportionate costs and interest at the rate of 9% p.a. from the date of petition till realization making all the respondents jointly and severally liable to pay the same.

6. Being aggrieved, the injured filed M.A.C.M.A.No.3511 of 2005 for enhancement of compensation and the insurer filed M.A.C.M.A.No.120 of 2006 seeking to set-aside the award.

7. Heard Sri K. Raghuv eer Reddy for the injured and Sri Phalguna Rao, learned counsel for the Insurance Company.

8. Learned counsel for the injured submits that the Tribunal has not awarded adequate compensation.

9. The injured has made a claim for Rs.10,00,000/-. Ex.A5 is the salary certificate of the injured, which shows that he was drawing salary of Rs.6,000/- per month. Basing on the said certificate, the Tribunal has taken the income of the injured as Rs.6,000/-, age as 25 years and applied correct multiplier, and has properly appreciated the evidence on record and awarded compensation of Rs.4,97,600/- with interest @9% per annum from the date of petition till realization. Therefore, there are no valid grounds to interfere with the findings of the Tribunal in this regard.

10. Learned counsel for the insurance company mainly contends that the Tribunal has granted excessive compensation to the injured, who was a Hamali by profession, by taking into consideration his income as Rs.6,000/- per month, and that the injured has not proved Ex.A5, salary certificate, by producing any witness in that regard and therefore the income of the injured to be taken into consideration as Rs.3,000/- per month. He further contends that the Tribunal has granted interest @ 9% per annum, which is highly excessive and therefore the same has to be reduced to 7.5% per annum.

11. As a matter of fact, awarding of rate of interest depends upon the facts and circumstances of each case. Time and again, it was held by the Courts under Section 171 of the Motor Vehicles Act that there is no fixed rate of interest, which can be awarded in cases arising under Motor Vehicles Act. The rate of interest has to be fixed basing on the facts of a particular case. The Tribunal has rightly appreciated the evidence on record and awarded interest

@ 9% per annum, which does not require any interference. Hence, there are no valid grounds to accept the submission of the learned counsel that the Tribunal has granted excessive rate of interest.

12. On consideration of the facts and circumstance of both the cases, the appeals do not deserve any merits.

13. In the result, the appeals are dismissed and the judgment of the trial Court is confirmed.

14. As a sequel, miscellaneous petitions, if any, pending in these Appeals shall stand dismissed as infructuous. No order as to costs.

Date: 19.01.2017.
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G. SHYAM PRASAD, J

