HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A. Nos. 4573 & 4557 of 2003

COMMON JUDGMENT:

Aggrieved by the award dated 30.06.2003 in O.P.No. 2514 of 2000 passed by the MACT cum IV Additional Chief Judge, City Civil Court, Hyderabad, both the claimant as well as the second respondent/Insurance Company preferred CMA No.4557 of 2003 and CMA No. 4573 of 2003 respectively.

2) The factual matrix of the case is thus:-

a) On 22.6.2000, while the claimant traveling in an auto rickshaw bearing No. AP 13V 4762 from Mehdipatnam to Secunderabad, and on the way when the vehicle reached upper tank bund road, R.T.C. bus bearing No. AP 10Z 7800 came from opposite direction and thereby both the vehicles collided together. In the resultant accident, the claimant sustained fracture injuries to his right forearm, left tibia and fracture mandible and some other passengers in the auto died. The claimant undertook treatment in Premier Hospital, Mehdipatnam, and he suffered disability. He claimed Rs.1,50,000/- as compensation against respondent Nos. 1 & 2, who are the owner and insurer of the offending auto and respondent Nos. 3 & 4, Managing Director and Depot Manager of APSRTC.

b) Respondent No. 1 remained *ex-parte*. Respondents 2 to 4 appeared and filed counters and opposed the claim.

c) During trial PWs 1 & 2 were examined and Exs. A1 to A10 were marked on behalf of claimant. On behalf of respondents RWs 1 to 3 were examined and Exs. B1 and B2 were marked.

d) The Tribunal, on appreciation of oral and documentary evidence, awarded Rs.1,11,200/- as compensation against respondents 1 & 2 holding that the accident was occurred due to the fault of auto driver. Hence, the appeals.

3) Since both the appeals arise out of the same judgment they are disposed of by this common judgment.

4) CMA No. 4573 of 2003 was dismissed for default as against R2 and CMA No. 4557 of 2003 was dismissed for default as against R1 vide Court Order dated 19.11.2015.

5) Parties in these appeals are referred to as they were arrayed before the lower Tribunal.

6) Heard arguments of Sri M. Vijay Reddy, learned counsel appearing for appellant/claimant, and Sri Vutla Srinivas Rao, learned counsel appearing for Insurance Company.

7) Challenging the compensation awarded as low and inadequate, learned counsel for claimant would firstly argue that though PW-2 has certified the disability of the claimant as 45% permanent, the Tribunal assessed the same at 20% without there being any reason and thereby the compensation was drastically reduced. Secondly he would argue that though the claimant claimed medical expenditure at Rs. 61,187/- and produced Ex. A-7 medical bills, the Tribunal awarded only Rs. 30,000/- and hence, the compensation needs to be enhanced. Thirdly he argued that the claimant has been working as theatre boy in Premier Hospital and getting Rs. 2,300/- per month and he produced Ex. A-6 salary certificate to that effect, but the Tribunal without considering the same fixed his salary at Rs. 15,000/- per month and calculated the compensation for disability accordingly. Due to that, the compensation is

drastically reduced. He thus prayed that compensation may be suitably enhanced.

8). Per contra, learned counsel for Insurance Company argued that the Tribunal committed a grave error in fastening the liability on Insurance Company. The auto at the relevant time of accident was overloaded by 12 persons though its seating capacity was six plus one. Due to the violation of the term, the liability of Insurance Company ceased and therefore, the Tribunal ought to have fixed the liability only on the auto driver by exonerating the Insurance Company. He further argued that the compensation awarded under different heads itself was on the high side and there is no need to enhance the same. Thus, he, at the first instance, prayed to allow his appeal and exonerate the Insurance Company and alternatively prayed that without there being any increase in the compensation, the appeal of the claimant may be dismissed.

9) The points that arise for determination in both the appeals are:-

(1) Whether the compensation awarded by the Tribunal is just and reasonable or needs enhancement?

(2) Whether the Tribunal was factually and legally right in fastening the liability on the Insurance Company?

(3) To what relief?

10) **POINT No.1:** The Tribunal awarded compensation under different heads as follows:

1. Pain and suffering:	Rs.10,000-00
2. Loss of income due to disability:	Rs.61,200-00
3. Compensation for loss of amenities:	Rs.10,000-00
4. Medical expenditure:	Rs.30,000-00
Total:	Rs.1,11,200-00

11) The first attack against the compensation is that the Tribunal ought to have accepted 45% disability for assessing the compensation. In the resultant accident, the claimant sustained fractures to both bones of right forearm, left tibia and mandible. He was treated in Premier Hospital. Ex. A-10, disability certificate, which was issued by PW-2, would show that the claimant suffered 45% disability. PW-2 was not the treatment doctor but on examination of the claimant on 5.4.2003, he issued the same. His evidence is to the effect that he noticed stiffness in the right elbow and also in the left knee and malunion in the tibial condyle with decreased range of movement in the right elbow as well as in the left knee joint. He further stated that due to these problems, the claimant would not be able to do regular work and he cannot walk for long distances as before. On these observations, he certified the disability at 45%. In the cross examination he claimed that after obtaining the necessary X-rays he has determined the disability.

12) I have carefully gone through the evidence of PW-2 and also Ex. A-10 disability certificate. Nothing is brought out on the record to disbelieve the evidence of PW-2. No doubt, his evidence would show that the claimant suffered 45% physical disability. However, in every case, the extent of physical disability need not necessarily result in equal extent of functional disability. The Court taking into consideration the nature of avocation of the patient, has to fix the percentage of functional disability and then award compensation (vide **Raj Kumar vs. Ajay Kumar**[1]). In the instant case, the claimant was working as theater boy in Premier Hospital. Therefore, it can be said that he is not associated with hard labour but to a certain extent, doing technical work. In that view of the matter, the functioning disability can be

[1] 2011 ACJ 1 (SC)

fixed at 25% permanent. The compensation for loss of earning power due to permanent disability would come to Rs. 76,500/- and the same is awarded. So far as the contention of the claimant relating to medical expenditure is concerned, the trial Court rightly observed that except filing Ex. A-7, bunch of medical bills, he has not examined the author of the medical bills or hospital in-charge. Therefore, the amount of Rs. 30,000/- awarded by the Tribunal can be considered as appropriate amount having regard to the nature of injuries and the nature of treatment. So far as the other heads of the compensation are concerned, they are just and reasonable. Thus the total compensation payable to the claimant under different heads is as below:

1.	Pain and suffering:	Rs.10,000-00
2.	Loss of income due to disability:	Rs.76,500-00
3.	Compensation for loss of amenities:	Rs.10,000-00
4.	Medical expenditure:	Rs.30,000-00
	Total:	Rs.1,26,500-00

So the compensation is enhanced by Rs.15,300/- (Rs.1,26,500/- minus Rs.1,11,200/-). Thus the point is answered accordingly.

13) **POINT No.2**: The Tribunal having considered that the auto driver was responsible for the accident and the auto was insured with the second respondent Insurance Company, has awarded the compensation against respondent Nos. 1 & 2 in O.P. So far as the contention of Insurance Company that the vehicle was overloaded, the Tribunal held that on that ground Insurance Company cannot repudiate its liability. No doubt the said finding is challenged in the appeal filed by the Insurance Company. However, it must be noted in the appeal CMA No. 4573 of 2003 filed by the Insurance Company was dismissed so far as the second respondent, who is the owner of the auto

rickshaw is concerned. Since the point of argument raised by the Insurance Company is having bearing on the second respondent, the same cannot be considered in his absence. In that view of the matter, the contention of the Insurance Company cannot be accepted. This point is accordingly answered against Insurance Company.

14) In the result, CMA No. 4557 of 2003 is partly allowed and compensation awarded by the Tribunal is enhanced by Rs.15,300/- with costs and interest at 7.5% per annum from the date of filing of appeal till the date of realization on the enhanced amount. The original amount shall carry interest at 9% per annum throughout.

15) C.M.A.No. 4573 of 2003 is dismissed without costs.

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

U.DURGA PRASAD RAO, J

Date: 23.08.2017
KA