THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3485 of 2005
and
Cross Objections (SR) No.13288 of 2006

COMMON JUDGMENT:-

Challenging the Order, dated 26.09.2005, passed in O.P.No.536 of 1997 by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Anantapur ('the Tribunal', for brevity), the United India Insurance Company Limited preferred M.A.C.M.A.No.3485 of 2005 seeking to set aside the impugned Order passed against it, and the claimant preferred Cross Objection (SR) No.13288 of 2006 seeking enhancement of compensation.

2. Heard the learned Standing Counsel for the appellant-the United India Insurance Company Limited, the learned counsel for the claimant and perused the record. Despite service of notice and listing the matter under the caption "For Orders", there is no representation for the respondent No.3/the Oriental Insurance Company Limited, Anantapur, and respondent No.4/owner of the lorry bearing registration No.ADC-33. This appeal is of the year 2005. Hence, this appeal can be disposed of on merits, basing on the material available on record, without waiting for the learned Standing Counsel for the 3rd respondent and the learned counsel for the 4th respondent to advance arguments. For convenience, the parties are hereinafter referred to, as arrayed before the Tribunal.

3. The learned Standing Counsel for the appellant in MACMA No.3485 of 2005 and the 1st respondent in Cross Objection (SR) No.13288 of 2006 (Insurance Company) would contend that though

there is ample evidence on record to substantiate that the subject accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No.TN-23-3116, the Tribunal erred in fastening the liability to pay compensation against the appellant-Insurance company merely because the appellant-Insurance company got settled certain claims before the Lok Adalat admitting the subject accident. The Tribunal failed to appreciate the oral and documentary evidence on record in proper perspective. The Tribunal granted a huge compensation of Rs.1,90,728/- for amputation of right leg above the knee joint of the claimant, assessing the disability suffered by him as 60%, which is erroneous and ultimately prayed to set aside the order under challenge passed against the appellant-Insurance Company.

4. On the other hand, the learned counsel for the Cross Objector in Cross Objection (SR) No.13288 of 2006/1st respondent in MACMA No.3485 of 2005 (claimant) would contend that though the evidence of P.W.2-doctor and Ex.A.2-certified copy of Wound Certificate clearly to go show that the claimant sustained 80% disability due to the accidental injuries, the Tribunal erred in assessing the disability sustained by the claimant as 60%. The claimant was 25 years old as on the date of the subject accident and he was an agriculturist. The Tribunal took the monthly income of the claimant as Rs.1,500/- which is on lower side and ultimately prayed to enhance the compensation as claimed.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

1. Whether the subject accident occurred on 20.06.1997 due to rash and negligent driving of the driver of the lorry bearing registration No.TN-23-3116 or the lorry bearing registration No.ADC-33 or there was contributory negligence on the part of the drivers of both the vehicles in the occurrence of the subject accident.

2. Whether the claimant is entitled for enhancement of compensation? If so, to what amount and from whom?

Point No.1:

6. Initially, the Original Petition was filed against the owner and the insurer of the lorry bearing registration No.TN-23-3116. Thereafter, the owner and the insurer of the lorry bearing registration No.ADC-33 were brought on record and were added as respondents 3 and 4 by the Tribunal, vide order, dated 23.08.2004, passed in I.A.No.889 of 2004. As per the entire criminal case record, particularly Ex.A.1-certified copy of FIR and Ex.A.4-certified copy of Charge-sheet, the driver of the lorry bearing registration No.TN-23-3116 was responsible for the occurrence of the subject accident on 20.06.1997 and the injuries sustained by the claimant. In the entire criminal case record, there is no mention that the driver of the lorry bearing registration No.ADC-33 was responsible for the occurrence of the subject accident. Further, except the evidence of P.W.1 (claimant), there is no other evidence on record with regard to the manner of occurrence of the accident. Ex.A.5 is the certified copy of the judgment in criminal case pertaining to the subject accident, wherein, the driver of the lorry bearing registration No.TN-23-3116 was convicted and sentenced. Absolutely, there is no legally acceptable evidence to believe that the subject accident occurred on 20.06.1997 was due to rash and negligent driving of the driver of the lorry bearing registration No.ADC-33. Merely because the appellant-

Insurance Company Limited got settled certain claims before the Lok Adalat admitting the subject accident and paying the compensation, that itself would not prove rashness or negligence on the part of the driver of the lorry bearing registration No.ADC-33, which is insured with the appellant-Insurance Company. Under these circumstances, the Tribunal ought not have held that there was negligence on the part of the drivers of both the lorries bearing registration Nos.TN-23-3116 and ADC-33 in the occurrence of the subject accident on 20.06.1997. The said finding of the Tribunal is erroneous and it can be safely concluded that the subject accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No.TN-23-3116. This point is answered accordingly.

Point No.2:

7. As regards the quantum of compensation, it is pertinent to state that the subject accident occurred on 20.06.1997. The earning capabilities of the persons in those days are required to be taken into consideration to assess and award compensation. The Tribunal, holding that the claimant was 26 years old as on the date of the subject accident and was an agriculturist, took his monthly income as Rs.1,500/-, applied multiplier '17.66', assessed the disability suffered by the claimant as 60% and awarded compensation accordingly. There is evidence of P.W.2-Dr.J.Jagannatham and the Wound certificate issued by him under Ex.A.2 that the claimant suffered 80% disability in the subject accident. It is not in dispute that the right leg of the claimant was amputated above knee joint due to the accidental injuries. As per the evidence on record, the claimant was an agriculturist. Amputation of right leg of the claimant above knee joint

would certainly have major impact on his working capability. The Tribunal ought to have considered the evidence of P.W.2-doctor and Ex.A.2-certified copy of Wound Certificate, wherein, it was shown that the claimant suffered 80% permanent disability. Hence, this Court deems it appropriate to take the disability sustained by the claimant as 80%. As far as the loss of earnings is concerned, admittedly, the subject accident occurred in the year 1997 and hence, the Tribunal had rightly taken the monthly income of the claimant as Rs.1,500/-. However, some hike is required to be added to the monthly income of the claimant. Hence, this Court deems it appropriate to take the monthly income of the claimant as Rs.2,000/-. Thus, the annual loss of income would come to Rs.24,000/- (Rs.2,000/- x 12). As per the judgment of the Apex court in case between Sarla Verma v. Delhi Transport Corporation[1], the appropriate multiplier applicable to the age of the deceased (26 years) is '17'. Thus, the total loss of earnings would come to Rs.3,26,400/- (Rs.24,000/- x 17 x 80%). Thus, the claimant is entitled to a total compensation of Rs.3,26,400/-. The Tribunal granted interest @ 9% per annum on the amount granted as compensation from the date of petition till realisation. This Court is inclined to grant interest @ 7.5% per annum on the enhanced amount of compensation from the date of petition till realisation.

8. Accordingly, M.A.C.M.A.No.3485 of 2005 filed by the Insurance Company is allowed the setting aside the order under challenge against the appellant-Insurance company and directing that the respondent No.3/the Oriental Insurance Company Limited, Anantapur, and respondent No.4/owner of the lorry bearing

[1] AIR 2009 SC 3104

registration No.TN-23-3116 are jointly and severally liable to pay compensation awarded by the Tribunal, as enhanced by this Court, to the claimant. Cross Objection (SR) No.13288 of 2006 filed by the claimant is allowed in part, enhancing the compensation from Rs.1,90,728/- to Rs.3,26,400/- with interest @ 7.5% per annum on the enhanced amount of compensation from the date of petition till realisation. On deposit of the enhanced compensation, the claimant is permitted to withdraw the same along with the interest accrued thereon. Other terms and conditions of the order under challenge remain unaltered.

9. At this stage, it is brought to the notice of this Court that the appellant-Insurance Company had deposited a part of the compensation granted by the Tribunal to the credit of the O.P pursuant to the passing of the impugned order. Since the claim against the appellant-Insurance Company is set aside, the appellant-Insurance Company is entitled to recover the amount so deposited from the respondents 3 and 4/insurer and the owner of the offending lorry bearing registration No.TN-23-3116 in the same proceedings before the Tribunal, by filing an Execution Application.

There shall be no order as to costs.

Pending miscellaneous Petitions, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

10th October, 2018
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