

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.3297 of 2005 & 3011 of 2012

COMMON JUDGMENT:-

Since the facts of the case, the issues involved, the parties and the Order under challenge, in both these appeals are one and the same, both these appeals are being disposed of by this common judgment.

2. Challenging the Order, dated 26.09.2005, passed in M.V.O.P.No.9 of 2002 by the Chairman, Motor Accident Claims Tribunal-cum-XI Additional District Judge (FTC), Guntur at Tenali ('the Tribunal', for brevity), the New India Assurance Company Limited preferred M.A.C.M.A.No.3011 of 2012 seeking to set aside the impugned Order and the claimant preferred M.A.C.M.A.No.3297 of 2005 seeking enhancement of compensation.

3. Heard the learned counsel for both sides and perused the record. The parties are hereinafter referred to, as arrayed before the Tribunal.

4. The learned counsel for the appellant in MACMA No.3297 of 2005 and the 1<sup>st</sup> respondent in MACMA No.3011 of 2012 (claimant) would contend that the claimant suffered grievous and simple injuries in the subject accident occurred on 24.10.2001. The claimant was travelling in the offending mini lorry bearing registration No.AP-07-V-3517 as the owner of goods. The Tribunal had elaborately dealt with the said issue

and rightly fastened liability to pay compensation against the insurer of the offending mini lorry. The Tribunal applied wrong multiplier to the age of the claimant for assessing the compensation towards loss of future earnings and earning capacity. The Tribunal had granted meagre compensation towards pain and suffering, transportation charges and medical expenses and ultimately prayed to enhance the compensation as claimed.

5. On the other hand, the learned Standing Counsel for the New India Assurance Company Limited representing the appellant in MACMA No.3011 of 2012 and 2<sup>nd</sup> respondent in MACMA No.3297 of 2005 (Insurance Company) would submit that fifteen passengers were travelling in the offending mini lorry bearing registration No.AP-07-V-3517 at the time of subject accident. There is no evidence on record to hold that the claimant was travelling in the offending mini lorry as the owner of goods at the time of subject accident. The Tribunal erroneously fastened liability against the Insurance Company and ultimately prayed to set aside the award passed against the Insurance Company.

6. In view of the above rival contentions, the points that arise for determination in both these appeals are as follows:

1. Whether the Tribunal is justified in fastening liability against the insurer of the offending mini lorry bearing registration No.AP-07-V-3517?
2. Whether grant of compensation of Rs.76,875/- with interest @ 7.5% per annum from the date of petition till realisation by the Tribunal in favour of the claimant is liable to be reduced/enhanced.

Point No.1

7. It is not in dispute that the claimant suffered injuries in the subject accident occurred on 24.10.2001, due to rash and negligent driving of the driver of the offending mini lorry bearing registration No.AP-07-V-3517. The Tribunal, while dealing with the subject matter of the claim petition, recorded a specific finding that the claimant was travelling in the offending mini lorry along with his goods, i.e., lemon fruit bags. The same is substantiated by Ex.A.1-Certified copy of FIR and Ex.A.2-Certified copy of Charge-sheet. A total of 24 lemon fruit bags were being carried by the claimant and three others in the offending mini lorry as on the date of accident. Generally, agriculturists transport their agricultural produce in goods vehicles. When the agricultural produce is of small quantity, they transport the same in mini transport vehicles. As per the record, the claimant and other three passengers were owners of 24 lemon bags and they were transporting the same in the offending mini lorry by paying fare of Rs.2,400/-. In view of the same, it cannot be said that the claimant was not travelling in the offending mini lorry as the owner of goods. The Tribunal rightly recorded a finding that the claimant was travelling in the offending mini lorry as the owner of goods as on the date of subject accident and as such, the insurer of the offending mini lorry cannot escape from its liability to pay compensation to the claimant, when the offending mini lorry was validly insured with it under Ex.B.1-Insurance Policy as on the date of subject

accident. There is nothing to take a different view. This point is accordingly answered in favour the claimant and against the Insurance Company.

Point No.2:-

8. As per the evidence of P.W.2-Dr.V.V.Narayana Rao, Assistant Professor, Orthopaedics, Guntur Medical College, Guntur, the claimant was referred to him with the following injuries:-

1. Abrasion on the anterior aspect of left thigh.
2. Restricted movements of right lower limb and swelling of upper part of thigh.

P.W.2 further stated that that the claimant sustained fracture of femur-right side; the claimant was treated by open reduction and 'K' nailing on 17.11.2001; the injury of fracture to femur-right side is grievous in nature; the claimant was having mild restriction of right hip movement and moderate restriction of right knee movement with shortening of 2 inch of right lower limb with a discharge sinus-right hip region as on the date of his evidence; the claimant sustained permanent and partial disability of 50%; the claimant cannot walk without assistance of a stick; and, that he is not fit to do any labour work. Though P.W.2 deposed that the claimant sustained 50% disability due to the injuries sustained by him in the subject accident, the appellant-claimant has not subjected himself for examination before the competent Medical Board in the District Headquarters Hospital to assess the disability sustained by him. No such report was filed before the Court. The Tribunal, after analysing

the entire evidence on record, took the age of the claimant as 50 years, his annual income as Rs.15,000/-, deducted 1/3<sup>rd</sup> of it towards personal expenses of the claimant and by applying relevant multiplier '11', granted a compensation of Rs.55,000/- towards loss of future earnings and earning capacity. The Tribunal also granted an amount of Rs.2,000/- towards attendant and diet charges, Rs.15,000/- towards pain and suffering, Rs.1,000/- towards transportation charges and Rs.3,875/- towards medical expenses. In all, the Tribunal granted an amount of 76,875/- as compensation in favour of the claimant with interest @ 7.5% per annum from the date of petition till realisation. The subject accident occurred on 24.10.2001. The earning capabilities of the persons and the medical expenses in those days were not much. Hence, there is justification on the part of the Tribunal in granting the said compensation in favour of the claimant. There are no circumstances either to enhance or to reduce the compensation granted by the Tribunal. Both the appeals are devoid of merit and are liable to be dismissed.

9. In the result, both the appeals are dismissed. No costs.

Pending Miscellaneous petitions, if any, in both these appeals, shall stand closed.

Dr. SHAMEEM AKTHER, J

12<sup>th</sup> September, 2018  
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