

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M. A. C. M. A. No. 1335 of 2009

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, (for brevity, 'the Act') is preferred by the appellant-claimant seeking enhancement of compensation challenging the Award and decree dated 20.12.2007 in M.V.O.P. No.1624 of 2006 passed by the Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad, (for brevity, 'the Tribunal'), awarding compensation of Rs.36,000/- as against the claim of Rs.1,00,000/- laid by him under Section 166 of the Act, for the injuries sustained by him in a motor vehicle accident that occurred on 02.03.2006.

2. The brief facts of the case are that on 02.03.2006, while the appellant was traveling along with others in a Lorry to attend a marriage, and when they reached Koudipally Village in Medak District, another Lorry bearing No.AP-9X-3636 driven by its driver in a rash and negligent manner, in high speed, dashed the lorry of the appellant. The appellant sustained grievous injuries and was shifted to Area Hospital, and from there to Sri Sai Chandra Nursing Home for better treatment. The appellant has claimed compensation of Rs.1,00,000/- against respondent Nos.1 and 2, the owner and insurer, respectively.

The 1st respondent remained exparte. The 2nd respondent denied its liability. It has also stated that the claim of the appellant is excessive and sought for dismissal of the claim petition. On consideration of the evidence of witnesses PWs.1 and 2, and Exs.A1 to A8 of the appellant, and Ex.B1-copy of the

insurance policy filed on behalf of 2nd respondent, the Tribunal awarded Rs.36,000/- with interest at 7.5% per annum from the date of petition till the date of award. Aggrieved by inadequate compensation, the appellant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

3. This appeal was filed in the year 2009. In spite of affording several opportunities, none appeared for the appellant-claimant. Heard Sri C. Buchi Reddy, learned Standing Counsel for the 2nd respondent-insurance company.

4. As seen from the grounds of appeal, the appellant sought for consideration of 50% permanent partial disability suffered by him due to the injuries received by him in the accident. As per the testimony of PW.2, the medical officer, the appellant has developed stiffness of right wrist, and suffered 50% disability. It is the case of the appellant that the Tribunal has not considered the evidence of medical officer in proper perspective, which has taken 15% towards partial permanent disability, though the appellant has suffered more disability.

5. The learned Standing Counsel for 2nd respondent submits that as per evidence of PW.2 medical officer, the appellant has suffered only 15% disability and not 50% as sought by the appellant and the same was rightly considered by the Tribunal.

6. PW.2 is the Doctor who treated PW.1 for his injuries. His testimony reveals that the claimant suffered 15% partial permanent disability, he issued Ex.A6-disability certificate stating that the appellant has been suffering from stiffness of right wrist and the disability of permanent partial in nature.

7. The testimony of PW.1 and PW.2 reveals that the appellant being a labourer would suffer difficulty in attending any physical work in future due to the disability. The Tribunal, however, awarded Rs.10,000/- as compensation towards 15% physical disability. The compensation awarded by the Tribunal towards 15% disability is only notional amount, but not based on his earnings. In this regard, the Tribunal has not followed the ratio laid down in **Sarla Verma v. Delhi Transport Corporation**¹ for assessing the compensation towards 15% disability suffered by the appellant.

8. Further, the compensation of Rs.20,000/- awarded by the Tribunal for two grievous injuries and towards pain and suffering is also on lower side and the same requires to be enhanced.

9. The compensation of Rs.6,000/- awarded by the Tribunal towards loss of earnings is also on lower side. If the Tribunal awards compensation as per the ratio laid down in **Sarla Verma's** case referred supra, the appellant would get more compensation under various Heads.

10. The claim of the appellant is just and reasonable in this case, as he has suffered 15% permanent partial disability and through out his life he may not be able to attend to hard physical labour work. The tribunal has also not awarded amount towards future prospects. Therefore, in the light of the ratio laid down in **Sarla Verma's** case, the compensation of

¹ (2009) 6 SCC 121

Rs. 36,000/- awarded by the Tribunal under various Heads is enhanced to Rs. 1,00,000/-.

11. **IN THE RESULT**, the Civil Miscellaneous Appeal is allowed, enhancing the amount of compensation from Rs. 36,000/- to Rs. 1,00,000/-, with proportionate costs, and interest at 7.5% per annum from the date of petition till realisation. The respondents are directed to deposit the compensation amount within one month from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the same.

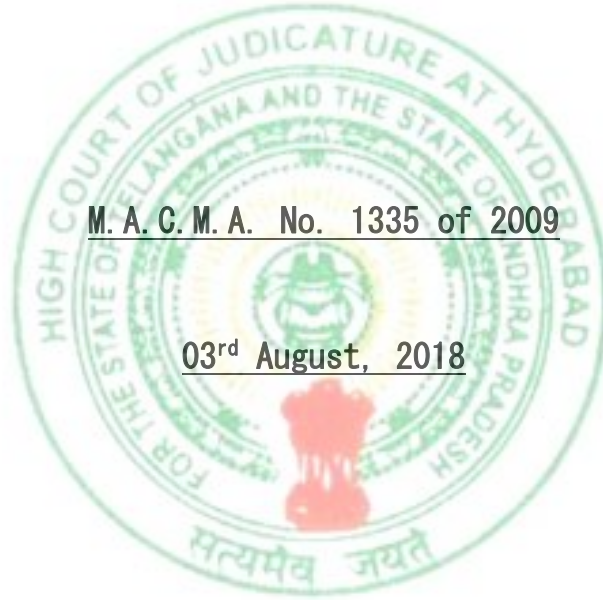
As a sequel, miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

03rd August, 2018
MsR / Ksm



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MSR