THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.745 of 2006 & 852 of 2007

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 28.01.2006, passed in M.V.O.P.No.450 of 2004 by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Vijayawada ('the Tribunal', for brevity), the National Insurance Company Limited preferred M.A.C.M.A.No.852 of 2007 seeking to set aside the impugned Order and the claimant preferred M.A.C.M.A.No.745 of 2006 seeking enhancement of compensation.

3. Heard the learned counsel for both sides and perused the record. For clarity, the parties are hereinafter referred to as per their array before the Tribunal.

4. The learned counsel for the appellant in MACMA No.745 of 2006 and the 1st respondent in MACMA No.852 of 2007 (claimant) would contend that though the claimant suffered 80% disability in the subject accident and claimed a compensation of Rs.40,00,000/-, the Tribunal had granted a meagre compensation of Rs.16,00,000/-. The claimant was pursuing Master of Computer Applications as on the date of subject accident. The Tribunal had taken the income of the claimant as Rs.5,000/- per month, took the disability suffered by her as 80%, applied multiplier '17' and granted an amount of

Rs.8,16,000/- towards loss of earnings. The Tribunal ought to have taken the monthly income of the claimant as Rs.15,000/-. The Tribunal had granted lesser amount towards medical expenses and ultimately prayed to enhance the compensation as claimed. In support of his contentions, the learned counsel for the claimant had relied on a decision of this Court in B.Ramulamma Vs. Venkatesh Bus Union, Lingarajapuram, Bangalore[1].

5. On the other hand, the learned Standing Counsel for the National Insurance Company Limited representing the appellant in MACMA No.852 of 2007 and 2nd respondent in MACMA No.745 of 2006 would submit that the Tribunal had granted excess compensation of Rs.16,00,000/- with interest @ 7.5% per annum, which is not supported by any oral or documentary evidence. There is no record to show that the claimant was pursuing Master of Computer Applications. The Tribunal had erroneously taken the monthly income of the claimant as Rs.5,000/-. There is no legally acceptable evidence to hold that the claimant had suffered 80% disability in the subject accident and ultimately prayed to reduce the compensation.

6. In view of the above rival contentions, the points that arise for determination in both these appeals are whether the claimant is entitled for a compensation of Rs.16,00,000/- granted by the Tribunal or whether the same is liable to be reduced/enhanced?

7. It is not in dispute that the claimant suffered injuries in the subject accident occurred on 02.10.2003, due to rash and negligent driving of the driver of the offending lorry bearing registration

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No.HR-38-F-2439. The case of the claimant is that she was pursuing MCA as on the date of accident and that she suffered 80% disability due to the accidental injuries. The Tribunal, after analysing the oral evidence of P.W.1, P.W.2 and the documentary evidence under Ex.A.4-Wound Certificate, A.10 to A.22-bills, prescriptions, X-rays, medical report, discharge summary and study certificate, held that the claimant suffered fracture of left hip, laceration of upper lip, neck tenderness and head injury. As per Ex.A.4-Wound Certificate and as per Ex.A.10-Discharge summary, the claimant suffered fracture-dislocation of C-5 with quadriplegia, she was shifted to ICCU for some time, surgery was conducted for anterior-carpectomy of C-5-decomprssion & CAGE-reconstruction and stabilization C4-C6 was done on 07.10.2003. While the claimant was under treatment, her left lower lobe collapsed and bronchoscopy was done. Chest and limb physiotherapy was also done. Psychiatrist treated the claimant for depression. She was also on ventilator for considerable period. Ex.A.16 to A.21 are the medical bills. As per Ex.A.22-Disability Certificate, the claimant suffered 80% disability due to the accidental injuries. Ex.A.5 is the Study Certificate of the claimant showing her study from X Standard to Degree. She secured first class in Bachelor of Computer Applications. As per the record, she was studying Master of Computer Applications. Taking all these factors into consideration, the Tribunal had taken the annual income of the claimant as Rs.5,000/- per month, took the disability suffered by her as 80%, applied multiplier '17' and granted an amount of Rs.8,16,000/- towards loss of earnings. The Tribunal also granted an amount of Rs.7,84,000/- towards medical expenses. In all, the Tribunal granted a compensation of Rs.16,00,000/- with interest @ 7.5% per annum from the date of petition till realisation. The learned Standing Counsel for the Insurance Company contended that taking the monthly income of the claimant as Rs.5,000/- is excessive. The claimant was pursuing MCA as on the date of subject accident. The subject accident occurred on 02.10.2003. The earning capabilities of a person in those days are required to be taken into consideration, including some hike in earnings. Therefore, taking the monthly income of the claimant as Rs.5,000/- by the Tribunal cannot be faulted.

8. The learned counsel for the claimant relied on B.Ramulamma's case cited supra, wherein, this Court took the monthly income of an unemployed Bachelor of Engineering student at Rs.12,000/- per month. Now-a-days, there is no guarantee that an engineering graduate or a person holding a MCA degree would secure lucrative employment. However, the claimant was pursuing MCA First year as on the date of the subject accident. In view of the same, taking the monthly income of the claimant as Rs.5,000/-, disability suffered by her as 80% and applying multiplier '17' to the age of the claimant by the Tribunal cannot be faulted. However, considering the nature of injuries suffered by the claimant, the Tribunal ought to have granted some amount towards extra-nourishment, transportation and attendant charges. On these scores, this Court deems it appropriate to grant an amount of Rs.1,00,000/- as compensation. Thus, the claimant is entitled for a total compensation of Rs.17,00,000/-. The Tribunal granted interest @ 7.5% per annum on the amount granted as compensation from

the date of petition till realisation, which is just and reasonable in the facts and circumstances of the case.

9. In the result, the M.A.C.M.A.No.745 of 2006 filed by the claimant is allowed in part, modifying the order, dated 28.01.2006, passed in M.V.O.P.No.450 of 2004 by the Tribunal, enhancing the compensation from Rs.16,00,000/- to Rs.17,00,000/- with interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till realisation. On deposit of the compensation, the claimant is permitted to withdraw the entire amount along with the interest accrued thereon. The other directions of the Tribunal holds good. Consequently, M.A.C.M.A.No.852 of 2007 filed by the Insurance Company is dismissed.

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

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Dr. SHAMEEM AKTHER, J

09th August, 2018
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