THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.704 of 2006 & 3379 of 2008

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.457 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.3379 of 2008 seeking to set aside the impugned Order and the claimant preferred M.A.C.M.A.No.704 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.704 of 2006 and the 1st respondent in MACMA No.3379 of 2008 (claimant) would contend that the claimant suffered multiple grievous injuries in the subject accident. He was a medical practitioner. He lost his whole practice due to the injuries suffered by him in the subject accident. The Tribunal had not granted any amount towards loss of past and future earnings. The Tribunal did not consider the medical bills marked as Ex.A.15 to a tune of Rs.2,82,757-35 ps. and awarded only

Rs.2,00,000/- towards medical expenses, which is meagre and ultimately prayed to enhance the compensation as claimed.

5. On the other hand, the learned Standing Counsel for the National Insurance Company Limited representing the appellant in MACMA No.3379 of 2008 and 2nd respondent in MACMA No.704 of 2006 would submit that the Tribunal had granted excess compensation of Rs.3,25,000/- with interest @ 7.5% per annum, which is not supported by any oral or documentary evidence 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 compensation awarded by the Tribunal 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 No.HR-38-F-2439. The case of the claimant is that he was a medical practitioner. The claimant has not filed any document to show that he is a medical practitioner. However, the claimant filed his income tax returns under Ex.A.9. As per the medical evidence and the documents placed before this Court, the claimant suffered fracture-acetabulum left with left hip posterior dislocation, 1st Coccygeal fracture, fracture of anterior arch of C-1 with displacement of odontoid of right, fracture of C4-7 vertebral bodies, fractures of nasal bones, Le-fort type-II fractures with fractures of right lateral orbital wall, lacerated would to right eyelid and bilateral frontal subdural hygromas. He underwent plastic surgery for facial rearrangement of maxilla bones. The claimant took treatment as in-patient in a

hospital for three weeks and skeletal traction arranged. The claimant filed Ex.A.15-medical bills to show that he incurred Rs.2,82,757-35 ps. towards medical expenses. The Tribunal having considered the aforementioned injuries suffered by the claimant, granted an amount of Rs.2,00,000/- towards medical bills and Rs.1,25,000/- towards injuries, fracture & disability. In all, the Tribunal granted an amount of Rs.3,25,000/- towards compensation with interest @ 7.5% per annum from the date of petition till realisation.

8. There is nothing to discard the medical bills under Ex.A.15. The same are substantiated by examining P.W.2. The Tribunal ought to have granted Rs.2,82,757-35 ps. towards medical expenses instead of Rs.2,00,000/-. Hence, this Court deems it appropriate to grant Rs.2,82,757-35 ps. (rounded off to Rs.2,83,000/-) towards medical expenses. The Tribunal granted Rs.1,25,000/- towards injuries, fracture and disability suffered by the claimant and there is no infirmity in the same. The Tribunal did not grant any compensation towards loss of income, extra-nourishment, transportation and attendant charges. Some amount is required to be granted under those heads. As per Ex.A.9-Income Tax returns, the annual income of the claimant was shown as Rs.71,590/- and the same cannot be disbelieved. Due to the injuries suffered in the subject accident, the claimant would not have worked for one year. Hence, this Court deems it appropriate to grant an amount of Rs.72,000/- towards loss of earnings for a period of one year, holding that the claimant did not work for one year due to accidental injuries. Further, this Court also deems it appropriate to grant an amount of Rs.15,000/- towards extra-nourishment, Rs.13,000/- towards transportation and attendant

charges. In all, the claimant is entitled for a compensation of Rs.5,08,000/-, as detailed below.

1.	Medical expenses	Rs.2,83,000/-
2.	Injuries, fracture and disability	Rs.1,25,000/-
3.	Loss of earnings	Rs.72,000/-
4.	Extra-nourishment	Rs.15,000/-
5.	Transportation and attendant charges	Rs.13,000/-
	TOTAL	Rs.5,08,000/-

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.704 of 2006 filed by the claimant is allowed in part, modifying the order, dated 28.01.2006, passed in M.V.O.P.No.457 of 2004 by the Tribunal, enhancing the compensation from Rs.3,25,000/- to Rs.5,08,000/- 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 hold good. Consequently, M.A.C.M.A.No.3379 of 2008 filed by the Insurance Company is dismissed.

Miscellaneous petitions, if any, pending in both these appeals, stand closed. There shall be no order as to costs.

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Dr. SHAMEEM AKTHER, J

09th August, 2018
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