HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.Nos 3196, 3177 and MACMA No.3195 of 2005 and MACMA. Nos 949,951,952 of 2006

COMMON JUDGMENT:

MACMA.No.3196 of 2005 and MACMA.No.952 of 2006 are filed against the common judgment and decree dated 11-07-2005 in OP.No.1654 of 2002 by the claimant and Insurance Company respectively.

MACMA.No.3177 of 2005 and MACMA.No.951 of 2006 are filed against the common judgment and decree dated 11-07-2005 in OP.No.1656 of 2002 by the claimant and Insurance Company respectively.

MACMA.No.3195 of 2005 and MACMA.No.949 of 2006 are filed against the common judgment and decree dated 11-07-2005 in OP.No.1249 of 2003 by the claimant and Insurance Company respectively.

All these appeals arise out of common judgment passed in above OPs and arise out of same accident and challenging the quantum of compensation, as such they are being disposed of by way of common judgment.

The claimant in OP.No.1654 of 2002 was aged 49 years, a sales manager working in Biological Evans Limited earning Rs.30,000/- per month. The petitioner in OP.No.1656 of 2002 was aged 39 years, working as Assistant General Manager in Biological Evans Limited, earning Rs.40,000/- per month; the petitioner in OP.No.1245 of 2003 was aged 30 years, drawing a salary of Rs.12500/- per month working in Gland Pharma Limited and the petitioner in OP.No.1249 of 2003 was aged about 35 years, working in Biological Evans Limited and drawing a salary of Rs.25,000/- per month. On 07-06-2002 all the petitioners were travelling in Toyota Qualis bearing No.AP 9AJ 3499 belonging to respondent No.1 insured with respondent No.2, from Hyderabad to Nagpur and by the time they reached outskirts of Bori outskirts of Maharashtra State, the driver of the vehicle drove it rashly and negligently, unable to control the speed, dashed against a bridge while negotiating a curve, as a result of which, the vehicle has fallen from 10 feet height into the canal. There is no water in the canal. The petitioners sustained various injuries. On a report, the Police Vadki registered a case in Cr.No.29/02 under Section 338 IPC.

The claimant in OP.No.1654 of 2002 sustained fracture injuries and other injuries all over the body. He was treated by Medical Officer, Adilabad and was inpatient in Uniqare Hospital, Hyderabad from 07-06-2002 to 19-06-2002 and was advised bed rest for three months and partially disabled. Therefore, he claimed Rs.90,000/- towards loss of income from 08-06-2002 to 30-09-2002; Rs.5,000/- towards Transportation to hospital; Rs.15,000/- towards extra-nourishment and medicine; Rs.5,000/- towards damages to clothing and article; Rs.1,25,000/- towards other expenses including medicines; Rs.60,000/- towards pain and suffering and Rs.1,00,000/- towards permanent and continuing disability, in all Rs.4,00,000/-with interest.

The claimant in OP.No.1656 of 2002 sustained fracture to right pubic and ischial rami and other injuries all over the body. She was treated by Medical Officer, Adilabad and was inpatient in

Uniqare Hospital, Hyderabad from 07-06-2002 to 22-06-2002 and was advised bed rest for three months and she was partially disabled. Therefore, she claimed Rs.1,20,000/- towards loss of income from 08-06-2002 to 30-09-2002; Rs.5,000/- towards Transportation to hospital; Rs.15,000/- towards extra-nourishment and medicine; Rs.5,000/- towards damages to clothing and article; Rs.1,25,000/- towards other expenses including medicines; Rs.80,000/- towards pain and suffering and Rs.1,50,000/- towards continuing or permanent disability, in all Rs.5,00,000/- with interest @ 12% per annum with costs.

The claimant in OP.No.1249 of 2003 had sustained wedge compression, fracture D10, vertebra and clavicle fracture and other injuries all over the body. He was treated as in-patient in Uniqare Hospital, Hyderabad from 07-06-2002 to 29-08-2002 and was advised bed rest for three months and partially disabled. Therefore, the claimant claimed Rs.75,000/- towards loss of income, Rs.6,000/- towards Transportation to hospital; Rs.12,000/- towards extra-nourishment and medicine; Rs.2,000/- towards damages to clothing and articles; Rs.1,55,000/- towards other expenses including medicines; Rs.50,000/- towards pain and suffering and Rs.1,00,000/- towards permanent and continuing disability, in all Rs.4,00,000/- with interest and costs.

In all these OPS, after framing the issues and considering the evidence on record the Tribunal held that the accident took place due to rash and negligent driver of respondent No.1.

<u>MACMA.No. 3196 of 2005 And MACMA.No.952 of 2006</u>

The claimant in OP.No.1654 of 2002 was granted Rs.90,000/- towards attendant charges and medical expenses, Rs.25,000/- towards loss of income and Rs.30,000/- towards pain and suffering. The Tribunal also held that since there was no disability, no amount was granted towards loss of future income. In all the Tribunal granted Rs.1,45,000/- towards total compensation along with interest @ 9% per annum from the date of petition till realization.

Learned counsel for the Insurance Company submits that the claimant is covered by Group Insurance Company through his employer and he has received certain amounts towards the same. But the Tribunal without deducting the said amounts granted compensation. Learned counsel for the appellant also submits that the interest was granted at the rate of 9%, but the same should be reduced to 7.5% per annum as held by Supreme Court. He also submits that regarding other aspects, the Tribunal has considered the issue and granted appropriate compensation. As such, the same does not require any enhancement.

On the other hand, learned counsel for the claimant submits that no amount was granted towards loss of future earnings and towards loss of disfigurement and also regarding disability.

In this case, since the Insurance Company is only contesting the judgment and decree passed by the Tribunal on the ground that the amount received by the claimant towards Group Insurance is not deducted, while awarding the compensation and the claimant is seeking for enhancement, other issues need not be gone into.

The only issue is whether amounts received by claimant from the Group Insurance have to be deducted in the amount awarded by the Tribunal; and the compensation awarded by the Tribunal is required to be enhanced or not?

The claimant claimed Rs.5,000/- towards transportation, Rs.15,000/- towards extra-nourishment, Rs.5,000/- towards damages to clothes and Rs.89,000/- towards medical expenses. The claimant produced medical bills under Ex.A-29 to show that he spent Rs.84,461-35 ps. He was in the hospital for a period of 12 days. The Tribunal also found that during the said period, an attendant must have attended on him, on whom he must have spent some amount for food, transportation etc., Considering the nature of injuries and period of stay in the hospital, an amount of Rs.5,000/- was granted towards attendant charges. The Tribunal in all granted Rs.90,000/-towards attendant and medical expenses respectively. The Tribunal granted amount of Rs.25,000/- towards loss of earnings, since the claimant was on leave from 07-06-2002 to 21-08-2002. The Tribunal also granted Rs.30,000/- towards pain and suffering. In all the claimant was granted compensation of Rs.1,45,000/- with interest.

It is to be seen that in this case, the claimant claimed Rs.5,000/- towards transport charges, but no amount was granted regarding the same. As such, the claimant is entitled for Rs.3,000/- towards transportation charges. Further the amounts awarded by Tribunal towards loss of earnings and medical expenses at Rs.25,000/- and Rs.90,000/- are confirmed. Though the claimant claimed Rs.5,000/- towards damage to clothing, but no amount was granted. But in view of injuries sustained by the claimant, it can be held that claimant suffered damage to clothing. As such, an amount of Rs.3,000/- is awarded towards clothing.

The claimant was in hospital for 12 days and an attendant must have attended on whom and he must have spent some amount for food, transportation etc., As such the amount granted under attendant charges is enhanced to Rs.10,000/- as against the amount of Rs.5,000/- granted by the Tribunal. It is stated by PW.8 Dr.Srinivasa Chary (wrongly described as PW.9) that the claimant suffered injuries on face, maxilla was separated and surgery was conducted on 12-06-2002 and he was provided four holed screws. He also stated that claimant was having disfiguration and he cannot open mouth completely and he cannot chew hard material. The patient is required another surgery.

Section 142 of Motor Vehicles Act reads as under:

> 142. Permanent disablement.—For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section
> (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:—
> (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
> (b) destruction or permanent impairing of the powers of any member or joint; or
> (c) permanent disfiguration of the head or face.

In view of the same, it is just and necessary to grant Rs.30,000/- towards disfigurement suffered by the claimant and an amount of Rs.25,000/- can be granted towards loss of amenities of life and the same are granted.

As far as the amounts received from the Group Insurance was concerned, no such plea was raised before the Tribunal and no evidence is let in even in the appeal except advancing the argument by learned counsel for the respondent-Insurance Company and no material is filed to substantiate their contention.

In view of the same, mere plea without proof cannot be accepted and the question of deducting the amounts received by the claimant towards Group Insurance Scheme while awarding compensation will not arise.

Thus in all, the claimant is entitled for Rs.2,16,000/ - as against the compensation of Rs.1,45,000/- awarded by the Tribunal.

MACMA.No.3177 of 2005 and MACMA.No.951 of 2006

The claimant in OP.No.1656 of 2002 was granted Rs.51,529-14 paisa towards treatment and medicines, Rs.5,000/- towards attendant charges and totalling Rs.56,529-14 paise, Rs.15,000/- towards loss of income, Rs.25,000/- towards pain and suffering and in all the claimant was granted Rs.96,529/- rounded off to Rs.97,000/-. The Tribunal also held that since there was no disability, no amount was granted towards loss of future income. In all the Tribunal granted Rs.97,000/- towards total compensation along with interest @ 9% per annum from the date of petition till realization.

Learned counsel for the claimant submits that no amount was granted towards loss of future earnings and towards disability though the claimant suffered fracture injuries.

Learned counsel for the Insurance Company submits that the Tribunal has rightly discarded the issue of loss of future income and disability, since there was no evidence that the injuries suffered by her permanent disabled from attending her work. As such, needs no interference of this Court. Learned counsel for the appellant also submits that the interest is granted at the rate of

9%, but the same should be reduced to 7.5% per annum as held by Supreme Court. He also submits that regarding other aspects, the Tribunal has considered the issue and granted appropriate compensation. As such, the same does not require any enhancement.

In this case, since the Insurance Company and the claimant is only contesting the judgment and decree passed by the Tribunal regarding quantum of compensation, other issues need not be gone into. The only issue required to be considered is whether the compensation awarded by the Tribunal is needs to be enhanced or not.

As far as quantum of compensation is concerned, the Tribunal has rightly granted Rs.51,529-14ps towards medicines and treatment basing on Ex.A.34 discharge bill. As such, the same is maintained. Though the claimant suffered fracture injuries and confined to bed and the Tribunal observed that she must have spent amount on attendant, transportation, extra-nourishment and other charges, awarded only Rs.5,000/- towards attendant charges, which is on lower side. As such the same is required to be enhanced and the same is enhanced to Rs.25,000/-. Though the Tribunal found that the claimant was earning monthly salary of Rs.34,970/-, only an amount of Rs.15,000/- towards loss of income. The claimant has produced leave certificate under Ex.A.33 showing that she was granted leave from 07-06-2002 to 24-07-2002 and she could not attend duties for one and half month. As such, she is entitled for loss of earnings for that period i.e. Rs.34,970/- + Rs.17,485/- works out to Rs.52,455/- and the same is granted towards loss of earnings.

It is to be seen that though the claimant suffered fracture of Pelvic and Ischial rami, only an amount of Rs.25,000/- towards pain and suffering, which is on lower and the same is enhanced to Rs.50,000/-.

Thus in all, the claimant is entitled for Rs.1,78,984/- rounded off to Rs.1,79,000/- as against the compensation of Rs.97,000/- awarded by the Tribunal.

MACMA.No.3195 of 2005 And MACMA.No.949 of 2006

The claimant in OP.No.1249 of 2003 was granted Rs.2,08,809-30 paisa towards medical expenses, Rs.10,000/- towards extra-nourishment and transportation etc., Rs.56,250/- towards loss of income, Rs.7500/- towards pain and suffering and Rs.27,000/- towards fractures and dislocation and Rs.25,000/- towards pain and suffering. Thus in all the claimant is entitled to compensation of Rs.3,00,059/- rounded off to Rs.3,01,000/- along with interest @ 9% per annum from the date of petition till realization. The Tribunal also held that there was no evidence that there was any loss of future career in view of injuries sustained by the claimant, no amount was awarded regarding disability.

Learned counsel for the Insurance Company submits that the Tribunal erred in awarding Rs.2,08,809/- towards medical expenses by relying on Ex.A.23 medical bills and Rs.56,250/- towards loss of income. Learned counsel for the Insurance Company also submits that the interest is granted at the rate of 9%, but the same should be reduced to 7.5% per annum as held by Supreme Court. He also submits that regarding other aspects, the Tribunal has considered the issue and granted appropriate compensation. As such, the same does not require any enhancement.

On the other hand, learned counsel for the claimant submits that no amount was granted towards injuries and loss of future earnings and also regarding disability, though the claimant suffered grievous injuries.

In this case, since the Insurance Company and the claimant are only challenging the quantum of compensation, other issues need not be gone into. The only issue is whether the compensation awarded by the Tribunal is required to be enhanced or not.

In this case PW.7 the medical officer deposed that the claimant had sustained fracture of dorsal-10 of spinal card and final diagnosis was wedge compression, fracture D10 vertebra with clavicle left with HTN. The claimant produced Ex.A.23 medical bills amounting to Rs.2,08,809-30ps and the same was granted by the Tribunal and the same is confined by rounding off to Rs.2,08,810/-. The claimant has claimed Rs.6,000/- towards transportation, Rs.2,000/- towards damages to clothing, Rs.12,000/- towards extra-nourishment, but the Tribunal has granted only Rs.10,000/- under the said heads. This Court is of the opinion that the same is on lower side. Since, the injuries suffered by claimant are grievous in nature and he was in hospital for about two months, Rs.12,000/- towards extra-nourishment is granted, Rs.2,000/- towards damage to clothing instead of Rs.10,000/- as granted by the Tribunal. No amount was granted by the Tribunal towards injuries suffered by the claimant. As such, this Court feels that it is just and necessary to grant

Rs.50,000/- towards injuries suffered by the claimant. Further the Tribunal has granted Rs.25,000/- towards pain and suffering and the same is required to be enhanced. As such, the same is enhanced to Rs.50,000/-. The amounts granted by Tribunal towards Rs.56,250/- towards loss of income is confirmed and the same is maintained.

Thus in all, the claimant is entitled for Rs.379,060/- rounded off to Rs.3,80,000/- as against the compensation of Rs.3,01,000/- awarded by the Tribunal.

In all the appeals, so far as rate of interest is concerned, the Tribunal has granted interest @ 9%, per annum, but the same is reduced to 7.5% as per the judgment of Supreme Court in **Rajesh v. Rajbir**[1] and the same rate of interest is awarded on the enhanced amount from the date of claim petition till realisation**.**

Accordingly, all the appeals filed by the claimants are allowed while partly allowing the appeals filed by the Insurance Company to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in the instant appeals shall stand disposed of.

A.RAJASHEKER REDDY, J

01-04-2019
Nvl

[1] 2013ACJ 1403=2013(4) ALT 35