HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.3040 of 2005 & 2671 of 2009

COMMON JUDGMENT:

Since both the appeals arise out of the common order, they are being disposed of by this common judgment.

2. Both the appeals are filed against the common order and decree dated 30-12-2004 passed in O.P.No.15 of 2004 by the M.A.C.T.-cum-I Additional District Judge, Karimnagar (for short 'the Tribunal').

3. Brief facts of the cases are that on 02-05-2003, when the claimant along with others was proceeding in a van bearing No.MH-34-A1881 from Ballarpur to go to weekly market at Ashti and when they reached near Ghanpur village, Maharastra State, the driver of the van drove it in a rash and negligent manner, as a result, the van turned turtle, due to which, he sustained head injury, blunt injury to abdomen and also fracture of the ribs on right side. Hence, he filed the claim petition against the insurer and owner of the crime vehicle claiming compensation of Rs.3.00 lakhs.

4. In the claim petition, the insurer of the crime vehicle filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver of the crime vehicle only. So far as granting of compensation is concerned, the Tribunal came to the conclusion to grant compensation of Rs.3,92,426/- i.e. Rs.20,000/- towards pain and suffering; Rs.1,38,426/- towards medical expenditure and Rs.2,34,000/- towards future income of the claimant, which comes to Rs.3,92,426/-. However, since the claimant restricted his claim to Rs.3,00,000/-, it granted only Rs.3,00,000/- towards total compensation. Accordingly, it allowed the claim petition granting compensation of Rs.3,00,000/- with interest at 9% per annum through out against the both insurer and owner of the crime vehicle to pay the compensation jointly and severally.

6. Aggrieved by the quantum of compensation, the insurer filed MACMA No.3040 of 2005 and the claimant filed MACMA No.2671 of 2009.

7. Heard the learned counsel for both the parties.

8. Learned counsel for the claimant contends that in the absence of proof of income, notional amount ought to have been considered since the claimant is doing plastic business and was traveling in the crime vehicle along with his goods; that due to the accident, he sustained injuries and serious grievous head injury and in

the light of evidence of P.W.4, doctor, to that effect, he is entitled for just compensation by considering notional income i.e minimum Rs.4,500/- per month as held by the Apex Court in **Ramchandrappa Vs. Manager, Royal Sundaram Aliance Insurance Co. Ltd.**[1]**,** since Rs.1500/- per month as fixed by the Tribunal is very less. Further, multiplier '14' is to be made applicable instead of '13' as per **Smt. Sarla Varma v. Delhi Transport Corporation**[2] since the claimant was aged about 45 years at the time of accident; and that 25% future prospects also can be granted as per **National Insurance Company Limited Vs. Pranay Sethi**[3] since he is self employed. Hence, he prayed for fair compensation.

9. Learned counsel for the insurer contends that the claimant's appeal itself is liable to be dismissed since the claimant is traveling in a goods vehicle as an unauthorized passenger and he is not supposed to travel in goods vehicle; that the amount computed to award i.e. Rs.3.50 lakhs is excessive than that of the actual claim made by the claimant; that the observation of the Tribunal that the claimant suffered 100% disability in the absence of any certificate issued by the competent authority, is unjust and more over, when a person who is suffering 100% disability due to his head injury cannot lead any evidence, sign the papers and file the O.P. Further, the Tribunal, in its order, considered Rs.1500/- per month as income of the claimant on the ground of absence of filing proof of income, and

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[1] 2011 (6) ALD 75 (SC)
[2] (2009) 6 S.C.C. 121
[3] 2017 (6) 170 (SC)

based on the evidence of P.W.4, doctor, who has treated the claimant, the Tribunal has given finding that the claimant is suffered from 100% permanent disability and accordingly, the compensation has been determined.

10. Having regard to the facts and circumstances of the case, this Court feels that there is some force in the contentions of both the parties and leading of fresh evidence is required in these cases.

11. In view of the same, the order passed by the Tribunal in O.P. is set aside and remand the matter to the Tribunal to hear the matter afresh by adducing the evidence afresh after affording reasonable opportunity to both sides and dispose of the O.P. Both the parties are at liberty to file any additional evidence in support of their cases and also lead oral evidence. This entire exercise needs to be completed within a period of six months from the date of filing of evidence by both the parties in addition to the evidence already subsisting in the O.P. or already available with the Court below.

12. Further, it is represented by both sides that in pursuance of the order passed by this Court, at the time of admission of the appeal, the insurer has deposited 50% of the decreetal amount and the same has been withdrawn by the claimant.

13. In view of the same, while deciding the O.P., whatever orders that would be passed by the trial Court, the amounts already paid by the insurer shall also be taken into account.

14. Accordingly, M.A.C.M.A.No.3040 of 2005 filed by the insurer is allowed and M.A.C.M.A.No.2671 of 2009 filed by the claimant is disposed of. No costs.

15. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 01.10.2019
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