

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.Nos.1940 OF 2006 and 2576 OF 2007

COMMON JUDGMENT:

MACMA.No.1940 of 2006 is preferred by the claimant/injured and MACMA.No.2576 of 2007 is preferred by the 2nd respondent/insurance company questioning the order of the V Additional Metropolitan Sessions Judge, Mahila Court-cum-XIX Additional Chief Judge, Hyderabad (for short, the Court below) in O.P.No.2109 of 2003 dated 19.07.2006.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Court below in the original petition.

3. The brief facts of the case are that the petitioner, along with his friend, was proceeding on his motorcycle towards Karolbagh, Mehdiapatnam, to the residence of one Senior Advocate of High Court at Balkamapet and after handing over the case file, he was returning to his house at about 9.20 p.m. and when he reached at Island X Road near Sarojini Eye Hospital, a lorry bearing No.AP 13T 3211 came in a rash and negligent manner from behind the petitioner while taking right turn and hit the motorcycle of the petitioner, as a result, the petitioner, who was going as a pillion rider fell down and sustained grievous injuries to legs, thigh, chest and head and became unconscious. He was shifted to CDR Hospital, Hyderguda, and he was kept in intensive care unit for four

days and thereafter he was shifted to Satya Kidney Centre, Himayathnagar, and he underwent Nail surgery for the right thigh. Prior to the accident, the petitioner was working as an Advocate and was earning Rs.7,000/- per month approximately. Because of the accident, he could not attend his work and lost his income. He also spent huge amount towards medical expenditure. Hence, the petitioner filed the present claim petition claiming compensation of Rs.4,00,000/-, payable by both the respondents, being the owner and insurer of the offending lorry.

4. In the claim petition, the 1st respondent remained *ex parte*. The 2nd respondent filed counter denying the allegations and contended that the amount claimed by the claimant is highly excessive and that it is not liable to pay any compensation and therefore prayed to dismiss the claim petition.

5. After considering the oral evidence of P.Ws.1 & 2 and R.W.1 and the documentary evidence of Exs.A-1 to A-7 & Ex.B-1, the Court below came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and actually awarded total compensation of Rs.1,18,662/-, i.e., Rs.20,000/- towards pain & suffering, Rs.86,662/- towards medical expenses and Rs.12,000/- towards loss of income, but the Court below erroneously mentioned as Rs.1,02,000/-, with interest @ 7%

per annum from the date of petition till the date of deposit, payable by both the respondents. Aggrieved by the said order, the claimant filed MACMA.No.1940 of 2006 and the 2nd respondent/insurance company filed MACMA.No.2576 of 2007.

6. Heard Sri C.Prakash Reddy, learned counsel for the claimant and Sri E.Venugopal Reddy, learned standing counsel for the 2nd respondent/insurance company. Perused the material record.

7. Sri C.Prakash Reddy, learned counsel for the claimant, submitted that though the claimant has mentioned his salary as Rs.7,000/- in the claim petition, but the Court below has erroneously disbelieved the same and fixed the monthly salary of the claimant @ Rs.4,000/-, which is very low. He further contends that the compensation amount awarded by the Court below is very meager, since the Court below has not granted any amount towards future surgery, transport charges and extra nourishment and prayed to allow the appeal.

8. Sri E.Venugopal Reddy, learned standing counsel appearing for the 2nd respondent/insurance company submitted that the Court below passed a well reasoned order and sought to dismiss the appeal. He further contended that the policy cover note issued by the Development Officer

cannot be relied upon as the cover note was not issued by the authorized person and the insurance company has already initiated steps regarding such type of discrepancies and the unauthorized activities of the employees of the insurance companies.

9. It is not for this Court to go into the validity of the cover note and the policy. Admittedly, as on the date of the accident, the crime vehicle is covered under the policy and the claimant is entitled for compensation.

10. Actually the Court below has awarded an amount of Rs.1,18,662/- as compensation, but erroneously mentioned as Rs.1,02,000/-, which is apparently an error on the face of the record. However, this Court feels that just compensation needs to be awarded. The Court below has awarded an amount of Rs.20,000/- towards pain and suffering, which is very meager. Therefore, this Court is inclined to enhance the same to Rs.30,000/-. The claimant is also entitled to an amount of Rs.20,000/- towards future surgery. Though the salary of the claimant is stated as Rs.7,000/- per month in the claim petition, the Court below has erroneously taken the monthly salary of the claimant as Rs.4,000/-, which is very meager. Therefore, this Court is inclined to take the monthly salary of the claimant @ Rs.7,000/-. Therefore, the loss of income for a period of three months comes to Rs.21,000/- (Rs.7,000 x 3 months). The Court below has not granted any

amount towards transport charges and extra nourishment. Therefore, this Court feels that it would be just and appropriate if an amount of Rs.10,000/- towards extra nourishment and Rs.5,000/- towards transport charges is awarded to the claimant. Except the above modification, the rest of the award remains un-changed. Hence, the total compensation under various heads is as under:

Sl. No.	Name of Head	Awarded by Court below	Awarded by this Court
01.	Pain & suffering	Rs.20,000/-	Rs.30,000/-
02.	Medical expenses	Rs.86,662/-	Rs.86,662/-
03.	Loss of income	Rs.12,000/-	Rs.21,000/-
04.	Future surgery	-	Rs.20,000/-
05.	Extra nourishment	-	Rs.10,000/-
06.	Transport charges	-	Rs.5,000/-
TOTAL		Rs.1,18,662/-	Rs.1,72,662/-

11. In the result, M.A.C.M.A.No.1940 of 2006 filed by the claimant is partly allowed enhancing the compensation amount awarded by the Court below from Rs.1,02,000/- to Rs.1,72,662/-, payable by both the respondents jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the entire amount.

12. M.A.C.M.A.No.2576 of 2007 filed by the 2nd respondent/insurance company is dismissed, However, it is left open to the 2nd respondent/insurance company to take all steps available under law against all the concerned persons who are involved in issuing cover notes or the policy without any proper authorization including the principle of pay and recovery.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 11th November, 2019

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