

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.801 OF 2005

AND

M.A.C.M.A.No.4491 OF 2008

COMMON JUDGMENT:

MACMA No.801 of 2005 is filed by the insurance company and MACMA No.4491 of 2008 is filed by the claimant against the order and decree, dated 21.12.2004 passed in O.P.No.461 of 2000 by the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District (for short 'the Tribunal).

2. Since both the appeals arise out of the same O.P, they are heard together and disposed of by way of this common judgment.

3. For the sake of convenience, the parties herein are referred to as arrayed before the tribunal.

4. As the sole appellant died during pendency of the appeal, as per order dated 06.09.2018 in MACMAMP No.420 of 2005 in MACMA No.4491 of 2008, his legal representative C.Sampath Kumar, who is the father of the claimant, was brought on record.

5. The brief facts are that the petitioner as pillion rider along with his friend, who was rider, on 02.02.2000 at 04.45 PM were proceeding from their college at Chikadpally towards Domalguda on Kinetic Hero Honda bearing No. AP 9Q 4998, when they reached near Himayathnagar junction road at Post Office, suddenly one auto rickshaw bearing No.AP 9V 7359 driven by its driver in a rash and negligent manner with high speed hit the kinetic hero Honda, for which the petitioner fell down on rear side of auto edge, became unconscious and weakness of lower and upper limbs with loss of sensation of both legs and hands and servical

bone dislocation from its position and his entire body damaged with severe injuries and that spinal cord in the neck dislocated, immediately he was shifted to CDR Hospital and later he was admitted in Yashodha Super Speciality Hospital at Somajiguda and took treatment to his injuries for a period of two months by taking leave. The petitioner became permanently disabled due to the accident and an attendant was also engaged to attend his personal needs. The petitioner spent huge amount towards medical and hospital expenses.

6. Respondent No.1 remained exparte. Respondent No. 2 filed counter denying the claim petition

7. In order to prove the case of the claimant, PWs.1 to 5 were examined and marked Exs.A1 to A.12 on his behalf. RWs.1 and 2 were examined and marked Exs.B.1 to B.5 on behalf of respondents in support of their contentions.

8. On considering the oral and documentary evidence, the tribunal granted compensation of Rs.5,00,000/- with interest at 9% per annum from the date of petition till the date of realisation and that the petitioner is not entitled to claim any interest on the amount awarded to engage an attendant in future and that the owner of the vehicle and the insurance company are directed to deposit the compensation amount, as against the compensation amount of Rs.10,00,000/-.

9. Learned standing counsel appearing for the insurance company contended that the amount awarded by the tribunal is excessive and that when the claimant is student, the tribunal considered his income as Rs.60/- per day and also awarded amounts under different heads i.e. rupees one lakh towards future necessity for attendant and that due to

negligence of the claimant, the accident occurred and he received injuries and that the breach is admittedly on the insured for having driven the transport vehicle without holding the transport licence and that the tribunal failed to see the evidence of PWs2, 3 and 5, doctors that the claimant was not disabled by 100% and hence, prayed to set aside the order of the tribunal by allowing the appeal.

10. Per contra, learned counsel for the claimant contended that the compensation granted by the tribunal is very meagre and that the claimant was a BCA student and that his entire body was immobilized and lost sensation from below neck portion and that the claimant required life long medical care and attendant and hence, prayed to enhance the compensation amount and that the petitioner suffered for 12 long years and died on 31.12.2011 because of prolonged illness due to the injuries caused in the accident.

11. This is a case of injuries. There is no dispute with regard to the manner of accident and involvement of the vehicle. The claimant was a student of 17 years pursuing BCA first year and on 02.02.2000 when he met with an accident, the Police Narayanaguda registered a case in Crime No.62 of 2000, which is Ex.A.1-FIR and Ex.A.2 - c.c. of charge sheet. On the strength of Exs.A.3 to A.8 the claimant has filed O.P. seeking compensation of Rs.10 lakhs for the injuries sustained by him, which are grievous in nature and he was totally bed ridden due to loss of sensation below the chest part and as per evidence of PW.2, doctor, there was no curing possibility of having control urine and motion and he was totally bed ridden. In view of the facts and circumstances of the case that the claimant had suffered prolonged illness and died, this Court feels that Rs.20,000/- granted by the tribunal towards pain and suffering

is very less, enhanced to Rs.70,000/- and Rs.15,000/- granted by the tribunal towards loss of amenities is very meagre and the same is enhanced to Rs.65,000/- and since the excess amount of medical bills as per the entitlement of the father of the claimant being the bank employee has been denied amounting to Rs.1,59,240/- and the same is considered under the head of medical and hospitalisation expenses and the other heads remain unchanged. Thus, the claimant is entitled for total compensation of Rs.7,59,840/- (Rs.3,45,600/- + Rs.1,59,240/- + Rs.65,000/- + Rs.70,000/- + Rs.1,00,000/- + Rs.20,000/-), which rounded to Rs.7,60,000/-. The enhanced compensation amount shall carry interest @ 7.5% per annum from the date of petition till the date of realisation. The claimant is entitled to withdraw the compensation amount soon after the deposit is made. In all other aspects the award passed by the tribunal holds good.

12. In view of the above, M.A.C.M.A.No.801 OF 2005 filed by the insurance company is dismissed and M.A.C.M.A.No.4491 of 2008 filed by claimant is partly allowed. There shall be no order as to costs.

Miscellaneous petitions, if any pending in these appeals shall stands closed.

T.AMARNATH GOUD,J

Date 16.10.2019
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