THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO.2914 OF 2013
AND
MACMA NO.1067 OF 2014

COMMON JUDGMENT:

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

2. MACMA No.2914 of 2013 is filed by the claimant and MACMA No.1067 of 2014 is filed by the insurance company against the judgment and decree dated 09.12.2013 passed by the XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Criminal Court, Hyderabad in O.P.No.965 of 2010, whereby the tribunal granted compensation of Rs.5,48,800/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization on account of the accident occurred on 20.02.2010, as against the claim of Rs.7,00,000/-.

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

4. Before the tribunal, in order to prove the case of the claimant, PWs.1 to 4 were examined and marked Exs.A1 to A.11. In order to prove the case of Insurance Company, RW.1 was examined and marked Exs.B.1 to B.6. The 1st respondent remained exparte. The 2nd respondent filed written statement denying the claim petition.

5. The brief facts of the case are that on 20.02.2010 at 03.00 PM near Tata Coffee, Brahmanpally, Toopran, Medak District, the claimant along with one P.Srinivasa Chary proceeding on Pulser Motorcycle bearing No.AP 23 P 8223 from Toopran towards Shivampet, slowly on extreme left side, one auto bearing No. AP 23 V 1525 driven by its driver with high speed in rash and negligent manner, dashed the bike, the claimant sustained head injury, crush injury of right leg, for which amputation of right leg, laceration on face and other parts of the body, immediately, he admitted in Gandhi Hospital, Secunderabad.

6. Learned standing counsel appearing for the Insurance Company vehemently opposed in entertaining the appeal filed by the claimant for enhancement of compensation on the ground that Ex.A.11-income certificate said to have been issued by PW.4, who is contractor is of no relevance and the same cannot be believed and Ex.A.7-the disability certificate issued by PW.2-doctor that the claimant sustained 80% disability is not the doctor, who treated the claimant and that the accident occurred due to collusion between auto and motorcycle and that the 2nd respondent herein, who is owner of the auto violated the terms and conditions of the policy and that she has no valid permit as required under the M.V.Act and that the compensation granted by the tribunal is exorbitant and without any basis and hence, prayed to allow appeal filed by the insurance company by setting aside the order passed by the tribunal.

7. Learned counsel for the claimant contended that the tribunal failed to appreciate the evidence available on record in proper perspective and that the compensation granted by the tribunal is meager and hence, prayed to grant just and proper compensation as per the decisions of the Apex Court by allowing the appeal.

8. It is a case of injuries. There is no dispute with regard to the nature of accident and involvement of the vehicle. Ex.A.7-disability certificate issued by the Medical Board of Sanga Reddy indicates 80% disability, but the tribunal considered 60% disability in the light of Ex.A.9-Estimation issued by Endolite Polo Center. As per schedule of Workmen's Compensation Act, the amputation between above knee level of middle thigh is 70% and accordingly, this Court is of the view that 70% disability is considered. The claimant being sub-contractor under PW.4 and doing contractual works of R&B, it would definitely had an impact upon his future earnings since he has to move here and there and he has to stand for long period while executing works and accordingly as per decision of the apex Court in **National Insurance Company Limited v Pranay Sethi**[1], 40% towards future prospects are considered. As per Ex.A.11-income certificate issued by the contractor, the income of the injured was Rs.2,00,000/- for two years i.e. annual income of the injured was Rs.1,00,000/- per year. The injured was 32 years, as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and**

[1] 2017(6) 170 (SC)

another[2], the relevant multiplier applicable is '17'. The annual income of the claimant with future prospects comes to Rs.1,40,000/-. The loss of income due to disability comes to Rs.16,66,000/- (Rs.98,000/- (Rs.1,40,000/- x 70%) x 17). The rest of the claim unaltered. Thus, the claimant is entitled for total compensation of Rs.17,76,000/- (Rs.16,66,000/- +50,000/- + Rs.30,000/- + Rs.30,000/-). The enhanced compensation shall carry interest @ 7.5 % per annum from the date of petition till the date of realization. The claimant is entitled to withdraw the compensation amount soon after the deposit is made. Though the claim is made for Rs.7,00,000/- in order to grant just and proper compensation for the reasons indicated above and in the light of the decision of the Apex Court in **Nagappa v Gurudayal Singh[3]** the compensation awarded can be more than the claim, the present appeal needs to be allowed. The claimant has to pay deficit court fee on over and above the claim amount and if the deficit court fee not paid as per Rule 475 of the M.V. Rules before the Tribunal, the claimant cannot be permitted to execute for the enhanced amount.

9. In view of the above, the appeal filed by the claimant is allowed and the appeal filed by the Insurance Company is dismissed. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 24.12.2019
kvrm

[2] 2009 ACJ 1298
[3] 2003(2) SCC 274