

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.Nos.1725 OF 2010 and 794 OF 2016

COMMON JUDGMENT:

MACMA.No.1725 of 2010 is preferred by the claimant/injured and MACMA.No.794 of 2016 is preferred by the 2nd respondent/insurance company questioning the order of the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short, the Tribunal) in O.P.No.1844 of 2008 dated 26.02.2010.

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

3. The brief facts of the case are that the petitioner was hale and healthy, aged about 20 years and he was doing business and earning Rs.8,000/- per month, at the time of the accident. On 29.06.2008 at about 2.45 p.m., near Malkapur Cross Road, while the petitioner was traveling in APSRTC Bus, at accident spot, the driver of crime lorry bearing No.AP 13T 2286 drove it rashly and negligently and dashed the bus, as a result of which the petitioner sustained grievous injuries. The petitioner was hospitalized. The petitioner spent huge amount towards medical expenses. Hence, the petitioner filed the claim petition claiming compensation of Rs.10,00,000/- payable by both the respondents, being the owner and insurer of the crime 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 the documentary evidence of Exs.A-1 to A-6 & Ex.B-1, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and awarded total compensation of Rs.7,79,000/-, i.e., Rs.7,56,000/- towards loss of earnings, Rs.3,000/- towards medical expenses and Rs.20,000/- towards pain & suffering, with interest @ 7.5% per annum from the date of petition till the date of realization, payable by both the respondents. Aggrieved by the said order, the claimant filed MACMA.No.1725 of 2010 and the 2nd respondent/insurance company filed MACMA.No.794 of 2016.

6. Heard Sri K.Hari Mohan Reddy, learned counsel for the claimant and Sri N.Mohan Krishna, learned standing counsel for the 2nd respondent/insurance company. Perused the material record.

7. Sri K.Hari Mohan Reddy, learned counsel for the claimant, submitted that due to the amputation of right hand

above elbow of the claimant, he cannot perform his duties as a soda vendor in future and hence, his disability can be considered @ 100%. In support of his contention, he relied on a decision of this Court in **Pamarthi Subba Rao v. H.Rama Rao**¹ and a decision of the Apex Court in **Rajan v. Soly Sebastian**². Basing on the said submissions, the learned counsel seeks to enhance the compensation amount.

8. Sri N.Mohan Krishna, learned standing counsel for the 2nd respondent/insurance company, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

9. A perusal of the order of the Tribunal, it is clear that the Tribunal has granted Rs.3,000/- towards medical expenses and Rs.20,000/- towards pain & suffering, which are reasonable and need no interference.

10. Insofar as the disability is concerned, Ex.A-5-Medical Certificate in respect of physically/visually handicapped candidate issued by Gandhi Hospital, Secunderabad, shows that the appellant suffered 70% disability due to amputation of his right hand above elbow, basing on which, the Tribunal fixed the disability @ 70%. A Division Bench of this Court in **Pamarthi Subba Rao**'s case (supra) held that *'if there is 100 per cent disability to do the work the workman was doing*

¹ 2009 ACJ 652

² 2015 Law Suit (SC) 783

earlier, it has to be treated that workman has suffered 100 per cent disability'. In **Rajan**'s case (supra), the Apex Court has confirmed 100% disability. In the present case, the claimant was working as a soda vendor and his right hand above elbow was amputated due to the accident. Since amputation of the claimant's right hand would affect his normal functioning as a soda vendor, I am inclined to fix the disability of the claimant at 100%, as per the ratio laid down in the above cases.

11. In the facts and circumstances of the case, as per para 14 of the order, since the Tribunal has taken the income of the claimant @ Rs.5,000/- per month, this Court is also inclined to consider the same. The multiplier for the age of the deceased is '18' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**³. Hence, the compensation under the head of 'permanent disability' comes to Rs.10,80,000/- (Rs.5,000/- X 12 X 18 X 100%). Therefore, the total compensation comes to Rs.11,03,000/- (Rs.10,80,000/- + Rs.3,000/- + Rs.20,000/-). Except the above modification, the rest of the award remains un-changed.

12. In the result, M.A.C.M.A.No.1725 of 2010 filed by the claimant is allowed enhancing the compensation amount awarded by the Tribunal from Rs.7,79,000/- to

³ (2009) 6 SCC 121

Rs.11,03,000/-, 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. As the claimant claimed only Rs.10,00,000/-, he is directed to deposit deficit Court fee before the Tribunal. 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, subject to payment of deficit court fee.

13. M.A.C.M.A.No.794 of 2016 filed by the 2nd respondent/insurance company is dismissed.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 9th December, 2019

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