

**THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY**

**MACMA.No.1252 of 2007**

**JUDGMENT:**

This appeal is filed seeking enhancement of compensation by Rs.6,45,822/- as against the compensation of Rs.2,73,300/- awarded by the tribunal below along with interest at 7.5% per annum from the date of petition till realization.

2. OP.No.2468 of 2001 was filed by the claimant under Section 166 of the Motor Vehicles Act, 1988 before the II Additional Chief Judge, City Civil Court, Hyderabad, against the respondent Nos.1 to 3. The respondent No.1 is the insurer, the respondent No.2 is the owner of the offending vehicle bearing No.AP 7T 7488 and the respondent No.3 is the driver of the offending vehicle. OP was filed by the claimant through his power of attorney holder.

3. The claimant, at the time of the accident, was aged 25 years and working as Software Engineer for Nokia in Texas, USA drawing an amount of \$ 5416.67 per month. The claimant visited India to attend his sister's marriage in the month of February 2000 and was to return to USA to attend his duties on 03.03.2000 by evening flight. The claimant visited his parents at Badrachalam in Khammam District and on 03.03.2000, at about 7.30 PM he started from Badrachalam on a Maruthi Van bearing No. APH 3636 along with his father, sister and brother-in-law to reach Hyderabad by afternoon. When the Maruthi Van reached the outskirts of Velminedu Village, a TATA 407 Mini Lorry bearing No.AP 7T 7488 coming from Hyderabad direction, driven by the respondent No.3 in a rash and negligent manner, hit the Maruthi Van, as a result of which the Maruthi Van turned turtle and fell towards the left side of the road and the Lorry fell towards the right side of the road. The accident occurred due to the rash and negligent driving of

the Mini Lorry by its driver. Cr.No.21 of 2000 was registered by the Chityala Police, Nalgonda District, against the driver of the Mini Lorry and the investigation disclosed that the accident occurred due to the rash and negligent driving of the driver of the Mini Lorry. The compensation was claimed by the claimant jointly and severally against the respondent Nos.1 to 3.

4. The claimant sustained multiple injuries, while the other passengers/family members did not receive serious injuries. The claimant sustained fracture of his right foot and injuries to his shoulder and knees. He further sustained scars on the left eye Cornea due to scratches by glass pieces. He was given first aid and shifted to Yashoda Super Speciality Hospital, Malakpet. He was discharged on 09.03.2000 with an advice to take complete bed rest. He was then shifted to Bhadrachalam for further treatment by taxi for which he paid Rs.2,000/-. At Bhadrachalam, he was treated by a Civil Assistant Surgeon, Area Hospital and Avadutha Eye Hospital. He was permitted to attend to his regular duties from 04.06.2000. The claimant sought time from his employer for reporting to duty and left for US on 05.06.2000.

5. The claimant stated that he lost salary for three months, which came to \$16,250/- equivalent to Rs.6,98,750/-. He further incurred an expenditure of Rs.26,000/- for hospitalization and Rs.2,000/- towards taxi fare. He made frequent calls to his employer in the US to apprise them of the situation else, he would have been removed from job. He suffered shock and pain and hence, claimed an amount of Rs.14,25,750/- as compensation.

6. The respondent Nos.2 and 3 remained *ex parte*. The respondent No.1 filed counter denying the averments in the claim petition. It was

stated that the compensation claimed was highly excessive. The manner in which the accident was narrated by the claimant was denied. The income of the claimant and loss of salary was denied. The nature of the injuries and treatment taken by the claimant was also denied. It was also contended that the driver of the Mini Lorry was not having valid license. So also the driver of the Maruthi Van in which the claimant was travelling.

7. The GPA holder of the claimant was examined as P.W.1. The doctors, who treated the claimant, were examined as P.Ws.2 to 5. The claimant relied on Exs.A1 to A15 documents. There was no evidence let in by the respondent No.1. The insurance policy was filed by the claimant and was marked as Ex.A14. Since there was no evidence from the insurance company, the tribunal below did not have any other alternative but to accept the case of P.W.1, who was also one of the co-passengers along with the claimant in the Maruthi Van, which collided with the Mini Lorry. The evidence of P.W.1 remained unchallenged. Hence, there cannot be any dispute regarding the fact that the accident occurred on relevant date and the driver of the Mini Lorry is responsible for such accident due to his rash and negligent driving.

8. Having considered the evidence of the doctors (P.Ws.2 to 5), who treated the claimant, the tribunal below held that the claimant suffered temporary disability due to the injuries sustained on account of the accident. The tribunal below awarded an amount of Rs.10,000/- for shock, pain and loss of amenities of life; Rs.5,000/- for the laceration over the mandible area right side; Rs.5,000/- for the splinters in the eye for the injuries sustained on the eye; Rs.18,372/- for the hospital expenses and Rs.2,000/- towards transportation charges. The compensation awarded under these heads is not

seriously challenged by the insurance company and the same is confirmed.

9. Now coming to the compensation awarded by the tribunal below towards loss of income, which was determined at Rs,2,32,916.81 ps, the aforesaid amount is awarded by recording a finding that there was no necessity for the claimant to stay back in India for such a long time foregoing the salary except to claim from the insurance company. Further, the tribunal below took the period of recovery of claimant as one month and held that the claimant was entitled for compensation of one month salary i.e. \$ 5,416.67, at the rate of Rs.43/-, which came to Rs.2,32,916.81 ps.

10. The claimant left to US on 05.06.2000 as per the averment in the claim petition and evidence of P.W.1. The accident occurred on 03.03.2000. The claimant was admitted as inpatient in Yashoda Hospital on 03.03.2000. P.W.3, Consultant Eye Doctor, stated that he found multiple glass splinters in both the eyes, which he has removed under local anaesthesia. The splinters have caused abrasion over the Cornea and Conjunctive and they also caused intense photo-phobia, which means, unable to open eyes to see light. The claimant was discharged on 09.03.2000 with an advice to review after 15 days. He was advised rest for two weeks.

P.W.4, Ophthalmic Surgeon, who treated the claimant in Avadhutha Eye Hospital, stated that he treated the injured on 20.04.2000 for the scars on the left Cornea and treated him as an out patient till 30.05.2000. To that effect, he issued Ex.A3 certificate.

P.W.5 is another doctor, who treated the claimant as an out patient for two months and issued Ex.A4.

The claimant sustained fracture of 5<sup>th</sup> Metatarsal bone of the right foot and some scratches in the eye due to glass splinters.

11. It is clear from the evidence of P.Ws.3 to 5, more particularly, the evidence of P.W.4 that the claimant underwent treatment till 30.05.2000. Since the evidence of P.W.1 and also P.Ws.3 to 5 remained unchallenged, the tribunal below could not have granted compensation, only for a period of one month, towards loss of income. Since P.W.4 categorically stated that the claimant underwent treatment till 30.05.2000 and as per the evidence of P.W.1 the claimant returned to US on 05.06.2000, there was no scope left for the tribunal below to do any guessing work. It would be absurd to state that the claimant remained in India only to claim compensation unmindful of his job prospects in US. It is a known fact that there is nothing like permanent employment in US. It is only a regular employment. There is no security of employment in US. If really the claimant had an intention to delay his visit to US, solely with an intention to claim compensation, he could have stayed in India for much longer time. The observation of the tribunal below is not only contrary to evidence but also without any basis.

12. In case of temporary disability, it cannot be said that the claimant would be so confident of getting compensation before the tribunal below for loss of income whatsoever claimed by him. The trauma, pain and sufferance of the claimant cannot be assessed by a Court with precision. As there was no challenge to the evidence regarding the claimant returning to US on 05.06.2000 coupled with the evidence of P.W.4, the doctor, who treated the claimant till 30.05.2000, this Court is of the opinion that the claimant is entitled for compensation towards loss of income for a period of three months i.e. \$5,416.61 x 3, at rate of Rs.43/-, which would work out to Rs.6,98,750.43 ps. In all, the claimant is entitled to total

compensation of Rs.10,000/- + Rs.5,000/- + Rs.5,000/- +  
Rs.18,372/- + Rs.2,000/- + Rs.6,98,750.43/- = Rs.7,39,122.43/-.

13. Hence, the claimant would be entitled to total compensation of Rs.7,39,122/- with proportionate costs. The award of the tribunal below is modified as indicated above. The award shall relate back to the date of decree and the compensation awarded shall carry the interest at the rate and from the date specified by the tribunal below.

The civil miscellaneous appeal is allowed. Pending miscellaneous applications, if any, shall stand closed.

April 23, 2021  
DSK

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B. VIJAYSEN REDDY, J