

THE HON'BLE JUSTICE G. SRI DEVI

M.A.C.M.A. Nos. 1403 of 2013 & 2648 of 2014

COMMON JUDGMENT:

Since these two matters arise out of the same accident, they are heard together and being disposed of by this common judgment.

MACMA.No.1403 of 2013 is preferred by the appellant-claimant, assailing the common order and decree of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (III Fast Track Court), Nalgonda at Miryalguda in O.P.No. 1427 of 2002 dated 17.01.2006. Whereas, MACMA.No. 2648 of 2014 is filed by claimant, who also suffered injuries in the very same accident, challenging the order and decree passed in O.P. No. 1428 of 2002, dated 17.01.2006 passed by the same Tribunal.

The learned counsel appearing on behalf of the claimants contends that the Tribunal erred in fastening liability only on the respondent No. 1 i.e., the owner of the offending vehicle and when the policy under Ex.B. 1 is very much in force, the respondent No. 2 i.e., the insurance company ought to have been held jointly and severally liable for paying the compensation; and (ii) the compensation granted is very meagre, and the Tribunal ought to have awarded a minimum amount of Rs.1,00,000/- considering the injuries received by the claimants. It is mainly contended by the learned counsel that in respect of the very same accident, while deciding the claim of other claimants-injured, in O.P. Nos. 997 of

2002 and batch, dated 13.04.2005, the learned Tribunal while answering issue No. 2, following the judicial precedent of the Apex Court in **Oriental Insurance Co. Ltd. V. Nanjappa and Others** (2004 ACJ 721), categorically held that the insurance company at first shall pay compensation determined by the Tribunal and then recover the same from the respondent No. 1 directly through Execution Petition. Since the appellants herein are also similarly situated with that of the claimants in O.P. No. 997 of 2002 and batch, the Tribunal ought to have applied the same principle with regard to the claim of the appellants herein and ought not to have exonerated the insurance company from its liability.

Heard the learned counsel for the claimants and Sri N. Parameswara Reddy, on behalf of respondent No. 2-Insurance Company. Since none represented the Insurance Company in M.A.C.M.A No. 2648 of 2014, this Court appointed Sri N. Parameswara Reddy, as the counsel on behalf of the Insurance Company.

By common order dated, 17.01.2006, the learned Tribunal disposed of both the O.Ps. The learned Tribunal while answering issue No. 2, in both the O.Ps., as to the entitlement of compensation by the claimants, proceeded to observe at para No. 12 as under:-

“Admittedly, the petitioners were travelling in the ill-fated tractor as passengers to attend the marriage. Then they are nothing but gratuitous passengers, if so, as gratuitous passengers, the petitioners are not entitled to claim

compensation from the insurance as per the law laid down by the Hon'ble Apex Court of India in Review Petition (Civil) No. 935 of 2003 in SLP (Civil) No. 935 of 2003 in SLP (Civil) No. 5628 of 2003 in M/s. National Insurance Company Limited v. Bommithi Subbhayamma and others. If so, the petitioners can maintain these petitions for compensation only against the respondent No. 1."

Admittedly, as contended by the learned counsel for the appellants, in respect of the claim of other injured persons in the very same accident, while deciding O.P. No. 997 of 2002 and batch, by common order, dated 13.04.2005, the very same tribunal awarded compensation as against the respondent Nos. 1 and 2 jointly and severally but observed that since the claimants were travelling as gratuitous passengers, the insurance company shall pay the compensation first and then recover the same from the owner i.e., the respondent No. 1 directly through execution petition. When such being the findings of the learned Tribunal, in the subsequent claim of the appellants herein, ought not to have exonerated the insurance company from the liability and ought not to have fixed the liability only as against the respondent No. 1. Therefore, the said findings of the learned Tribunal on this aspect is hereby set aside and the respondent Nos. 1 and 2 are jointly and severally liable to pay the compensation. However, the respondent No. 2 can directly recover the said amount from respondent No. 1.

Coming to the aspect of enhancement of compensation, this Court is inclined to deal with the same separately.

M.A.C.M.A. No. 1403 of 2013

The learned Tribunal, in all, awarded a sum of Rs.45,000/- under different heads i.e., transport charges; extra nourishment; medical bills; pain and sufferings; loss of future earnings; grievous injures and simple injury. The learned counsel for the appellant has contended that the amount awarded is meagre and has sought for enhancement of the same as the claimant has received multiple grievous injuries. Considering the claim made by the appellant and considering the nature of injuries received by him, the amount of compensation granted by the learned Tribunal i.e., Rs.45,000/- is hereby enhanced to Rs.73,000/- under various heads as under:-

Sl. No.	Name of Head	Awarded Tribunal Rs. Ps.	Awarded by this Court Rs. Ps.
1.	Transport expenses	1,000.00	2,000.00
2.	Extra nourishment	5,000.00	7,000.00
3.	Medical expenses	10,000.00	30,000.00
4.	Pain and suffering.	5,000.00	10,000.00
5.	Loss of future earnings	24,000.00	24,000.00

	TOTAL	45,000.00	Rs.73,000.00
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M.A.C.M.A. No. 2648 of 2014

In this case, the learned Tribunal, in all, awarded a sum of Rs.46,500/- under different heads i.e., transport charges; extra nourishment; medical bills; pain and sufferings; loss of future earnings; grievous injures and simple injury. The learned counsel for the appellant has contended that the amount awarded is meagre and has sought for enhancement of the same as the claimant has received multiple grievous injuries. Considering the claim made by the appellant and considering the nature of injuries received by him, the amount of compensation granted by the learned Tribunal i.e., Rs.46,500/- is hereby enhanced to Rs.84,000/- under various heads as under:-

Sl. No.	Name of Head	Awarded by Tribunal Rs. Ps.	Awarded by this Court Rs. Ps.
1.	Transport expenses	1,000.00	2,000.00
2.	Extra nourishment	3,000.00	5,000.00
3.	Medical expenses	7,500.00	36,000.00
4.	Pain and suffering.	5,000.00	10,000.00

5.	Loss of future earnings	27,000.00	27,000.00
6.	Loss of earnings during treatment	3,000.00	4,000.00
	TOTAL	46,500.00	Rs.84,000.00

The award of the learned Tribunal is modified as indicated above. The enhanced amount shall carry interest at 7.5% p.a. from the date of order passed by the Tribunal till the date of realization, payable by respondents 1 and 2 jointly and severally.

Both the M.A.C.M.As. are allowed in part as indicated above. There shall be no order as to costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

JUSTICE G. SRI DEVI

December 21, 2021
tsr

THE HON'BLE JUSTICE G. SRI DEVI

M.A.C.M.A. Nos. 1403 of 2013 & 2648 of 2014

DATE: 21-12-2021