

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.Nos.2123 & 3053 OF 2016

COMMON JUDGMENT:

M.A.C.M.A.No.2123 of 2016 is directed against the award dated 04.12.2015 in O.P.No.633 of 2011, on the file of the Motor Accidents Claims Tribunal-cum-XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short 'the Tribunal), wherein the said claim application filed by appellant-claimant seeking compensation was allowed-in-part, awarding Rs.18,02,000/- with interest at 9% per annum from the date of petition. M.A.C.M.A.No.3053 of 2016 is filed by the appellant-insurer aggrieved by the award dated 04.12.2015.

2. Heard both the learned counsel in both the cases. Perused the record.

3. The claimant filed claim application seeking compensation of Rs.20,00,000/- on account of the injuries sustained by the claimant in a motor vehicle accident that occurred on 06.02.2011 at about 05:30 a.m., near Mangampalli State, Veldurthi, Kurnool. According to the claimant, on that day, he was proceeding on Eicher van

bearing No.AP 02 V 7464 from Ranigunj, Secunderabad towards Ananthapuram and when he reached the outskirts of Veldurthi, a lorry bearing No.AP 21 X 5279, driven by its driver in high speed was proceeding in front of their vehicle and when the driver of the said lorry applied sudden break in a negligent manner, the Eicher van hit the offending lorry from rear side. As a result, the same, the claimant sustained (a) Gr.3 compound fracture, right shaft femur, (b) Gr.3 compound comminuted fracture of right tibia, (c) Closed fracture of left shaft femur, (d) Gr.3 compound fracture both bones of left leg, (e) D-12 burst fracture, (f) closed fracture of D/E radius Left and (g) amputation of right leg above knee, besides other injuries all over the body. Police, Veldurthi registered a case in Cr.No.17 of 2011 against the driver of the lorry. The claimant was aged 27 years at the time of accident and was working as driver getting an amount of Rs.8,000/- per month and used to maintain his family members. Owing to the accident, the claimant is totally bed ridden as his leg was amputated up to knee.

4. The owner of the offending lorry remained *ex parte* before the Tribunal and insurer filed counter opposing the claim and denying its liability to pay the compensation.

5. On a consideration of the evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the lorry by its driver. The Tribunal further held that the claimant is entitled for a total compensation of Rs.18,02,000/-. Accordingly, an award was passed for the said amount with interest at 9% per annum. Not satisfied with the same, the claimant filed M.A.C.M.A.No.2123 of 2016 seeking enhancement of compensation, while the insurer filed M.A.C.M.A.No.3053 of 2016 on the ground that the compensation awarded by the Tribunal is on the higher side.

6. The points for determination are – whether the claimant is entitled for enhancement of compensation and if so to what extent? and whether the compensation awarded by the Tribunal is liable to be set aside?

7. The learned counsel for the claimant would contend that the claimant was a driver and owing to the accident, his right leg above

knee was amputated and as such, the functional disability is 100% and the income of the claimant has to be calculated at Rs.8,000/- per month by adding future prospects at 40% and prayed to award the enhanced compensation. In support of his submissions and contentions, learned counsel relied on following decisions:

- i. **GUNASEKARAN v. DINESH AND ANOTHER¹**
- ii. **JITU PRAMANIK v. NATIONAL INSURANCE COMPANY LIMITED AND ANOTHER²**
- iii. **RAMESH KUMAR v. VENKATESAN³**
- iv. **KALA DEVI AND OTHERS v. BHAGWAN DAS CHAUHAN AND OTHERS⁴**
- v. **RAJKUMAR v. AJAY KUMAR AND ANOTHER⁵**
- vi. **PARMINDER SINGH v. NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS⁶**
- vii. **CHANAPPA NAGAPPA MUCHALAGODA v. DIVISIONAL MANAGER, NEW INDIA INSURANCE COMPANY LIMITED⁷**
- xiii. **JAKIR HUSSEIN V. SABIR AND OTHERS⁸**
- ix. **RAJAN v. SOLY SEBASTIAN AND ANOTHER⁹**

¹2020 ACJ 2514

²2020 ACJ 2556

³CMA(MD) No.259 OF 2021 Madras High Court

⁴2014 ACJ 2875

⁵(2011) 1 SCC 343

⁶(2019) 7 SCC 217

⁷(2020) 1 SCC 796

⁸2015 ACJ 721

⁹(2015) 10 SCC 506

- x. **JITHENDRAN v. NEW INDIA ASSURANCE COMPANY LIMITED & ANOTHER¹⁰**
- xi. **NEW INDIA ASSURANCE COMPANY LIMITED v. GAJENDER YADAV AND OTHERS¹¹**
- xi. **RAJNI AND OTHERS v. UNION OF INDIA AND OTHERS¹²**
- xii. **LALAN D v. ORIENTAL INSURANCE COMPANY LIMITED¹³**
- xiii. **SUDEEP A.K v. GENERAL MANAGER, KSRTC AND OTHERS¹⁴**
- xv. **POONGAVANAM v. RELIANCE GENERAL INSURANCE COMPANY LIMITED AND ANOTHER¹⁵**
- xvi. **NAKKA RAM BABU v. O.AKKA RAO AND ANOTHER¹⁶**
- xvii. **SYED SADIQ v. DIVISIONAL MANAGER, UNITED INDIA INSURANCE COMPANY¹⁷**
- xviii. **NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS¹⁸**
- xix. **NAGAPPA v. GURUDAYAL SINGH AND OTHERS¹⁹**
- xx. **RAJ KUMAR v. AJAY KUMAR AND ANOTHER²⁰**

¹⁰AIR 2021 SC 5382

¹¹2017 ACJ 2834

¹²2017ACJ 2837

¹³(2020) 9 SCC 805

¹⁴2020 ACJ 2108

¹⁵2022 ACJ 205

¹⁶2015(4) ALD 50

¹⁷2014 (2) ALD 133 (SC)

¹⁸2017 (6) ALT 60 (SC)

¹⁹(2003) 2 SCC 274

²⁰(2011) 1 SCC 343

8. On the other hand, learned counsel for the insurance company would submit that the claimant suffered 85% disability resulting in shortening of leg and it does not come within the preview of permanent functional total disability. As such, the percentage of disability has to be revised and calculated towards loss of earnings. In support of his submission and contention, he relied on the decision of the Apex Court in **RAMPRASAD BALMIKI v. ANIL KUMAR JAIN AND OTHERS**²¹.

9. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the lorry by its driver is not seriously disputed.

10. The claimant, as P.W.1, in his evidence stated that he sustained injury Nos.a to g stated above. Amputation of his right leg was done and plates were fixed to left tibia. He further stated that the amputation restricted his movements and there is limping in walking and due to amputation, he cannot walk even for small distance and he suffered 100% loss of earnings.

²¹(2008) 6 ALD 82 (SC)

11. P.W.2, Dr.K.S.Asif Hussain, Associate Professor in the Department of Orthopaedics department in NIMS Hospital, in his evidence stated that the claimant was treated as inpatient with Grade IIIA compound fracture shaft of right femur plus and Grade IIIB compound comminuted fracture of right tibia and closed fracture left femur and Grade III A compound fracture of both bones of left leg and burst fracture D12 vertebra with closed fracture distal and radius on the left side. The claimant was also operated on 08.02.2011 for amputation above knee of right lower limb and second surgery was performed on 16.02.2011 and was fixed with plating of left femur and ilizarov external fixator for left tibia was done. P.W.2 further stated that the claimant suffered 85% permanent disability and Ex.A-9 is the report issued by NIMS Hospital and Ex.A-10 is the disability certificate issued by him.

12. It is not in dispute that the claimant sustained 85% disability and the Tribunal, after taking the disability as 85% and the income of the claimant at Rs.70,000/- per annum, computed the loss of earnings by applying the multiplier '16' and awarded an amount of

Rs.9,52,000/- (Rs.70,000/- x 16 x 85%) towards loss of future earnings.

13. Learned counsel for the claimant vehemently submits that the claimant suffered 100% functional disability and the same can be assessed as 100% and he cannot drive the vehicle as before. The claimant used to earn Rs.8,000/- per month during the relevant time and prayed to calculate the loss of earnings by awarding future prospects. In support of his submission, the learned counsel relied on the decision of the Hon'ble Apex Court in **CHANAPPA NAGAPPA MUCHALAGODA's** case (7 supra), wherein the Apex Court held at para 10 as under:

“In *K. Janardhan v. United India Insurance Co. Ltd.*, (2008) 8 SCC 518), this Court examined the loss of earning capacity in the case of a tanker driver who had met with an accident, and lost one of his legs due to amputation. The Commissioner for Workmen's Compensation assessed the functional disability of the tanker driver as 100% and awarded compensation on that basis. The High Court however, referred to Schedule I to the Workmen's Compensation Act, 1923, and held that loss of a leg on amputation resulted in only 60% loss of earning capacity. This Court set aside the judgment of the High Court, and held that since the workman could no longer earn his living as a tanker

driver due to loss of one leg, the functional disability had to be assessed as 100%”.

14. On the other hand, learned counsel for the insurance company would contend that the claimant suffered 85% disability and the same cannot be considered as 100% functional disability. In support of the same, he relied on the decision in **RAMPRASAD BALMIKI**’s case (21 supra) wherein it was held thus:

“The decision in *Gifran v. Sarbjeet and others*. [(2000) 9 SCC 338], relied upon by Mr. Mody does not lay down any legal principle. Although therein medical evidence showed that the claimant had suffered 80% disability, the overall disability was taken at 50% only; of course, the future prospects have been taken into consideration, as in that case also the right leg of the claimant had to be amputated. Some shortening of the legs can be made up with specially manufactured shoes. A person can even drive a vehicle even with artificial limbs. A claim for obtaining 100% compensation for his permanent disability must be supported by reason as has been held by this Court in *National Insurance Co. Ltd. v. Mubasir Ahmed and Anr.* [(2007) 2 SCC 349]. No material has been brought on record by the appellant in this regard”.

15. In the instant case, it is the evidence of P.W.2 that the claimant sustained 85% disability to right lower limb. The claimant suffered compound fractures of right femur and right

tibia and compound fracture to bones and burst fracture D12 vertebra with closed fracture distal end of radius on the left side. P.W.2 also stated that the claimant can perform his duty as a driver as prior to the injury due to RTA. The said statement of P.W.2 appears to be not believable and it appears that he recorded the same without understanding the proper disability suffered by the claimant. In the instant case, it is proved with cogent evidence of P.W.2 and Exs.A-5, A-6, A-7, A-9 and A-10 that the claimant suffered 85% disability. Having considered the judgments of the Hon'ble Apex Court referred above and considering the facts and circumstances of this case and also the fact that the claimant used to work as driver and due to the disability suffered by him, he cannot no longer earn his living as a driver, the functional disability can be assessed as 100%.

16. The Tribunal assessed the income of the claimant Rs.70,000/- per annum without any basis. However, as the claimant was a diver, his income can reasonably be fixed at Rs.6,000/- per month i.e., Rs.72,000/- per annum (Rs.6,000/- x 12).

As per the decision of the Apex Court in **PAPPU DEO YADAV v. NARESH KUMAR AND OTHERS**²², the claimant is entitled for additional 40% on the income towards future prospects. If the same is applied, the income of the claimant comes to Rs.1,00,800/- (Rs.72,000/- + Rs.28,800/- i.e., Rs.72,000 x 40%). The claimant was aged 28 years at the time of accident and the relevant multiplier applicable is '16' as per the decision of the Hon'ble Apex Court in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**²³. Thus, the future loss of earnings can be computed at Rs.16,12,800/- (Rs.1,00,800/- x 16). The Tribunal had awarded Rs.3 lakhs for the artificial limb and Rs.1 lakh towards pain and suffering, Rs.1 lakh towards future and present medical expenditure and Rs.50,000/- towards physiotherapy treatment, and Rs.1 lakh for extra nourishment, traveling and attendant charges. The Tribunal awarded an amount of Rs.2 lakhs towards loss of earnings while computing the same. Since this court has now awarded additional 40% on the income towards loss of future prospects, the claimant not entitled for Rs.2 lakhs awarded by the Tribunal towards loss of

²² AIR 2020 SC 4424

²³ 2009(6) SCC 121

earnings. The compensation awarded by the Tribunal under different heads is just and reasonable and the same is confirmed. Thus, in all, the claimant is entitled Rs.22,62,800/- (Rs.16,12,800/- + Rs.3,00,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.50,000/- + Rs.1,00,000/-). The impugned award is modified accordingly. Learned counsel for the insurer would submit that the interest awarded by the Tribunal at 9% is on the higher side and the same may be reduced to 7.5%. The contention of learned counsel for the insurer appears to be just and reasonable.

17. Accordingly, M.A.C.M.A.No.2123 of 2016 is allowed and M.A.C.M.A.No.3053 of 2016 is allowed-in-part. The claimant is entitled for interest at 7.5% per annum on the enhanced amount from the date of award passed by the Tribunal till realization, payable by the owner and insurer of the vehicle jointly and severally. The claimant shall pay deficit court fee on the enhanced compensation. There shall be no order as to costs.

18. Pending miscellaneous petitions, if any, stand closed.

A.SANTHOSH REDDY, J

26.10.2022
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