HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. Nos.2458 and 4230 of 2014

COMMON JUDGMENT:

Since both the appeals are arising out of the same judgment, they are heard together and being disposed of by this common judgment.

2. While M.A.C.M.A. No.2458 of 2014 is filed by the claimant seeking enhancement of compensation, M.A.C.M.A. No.4230 of 2014 is filed by the Universal Sompo General Insurance Co. Ltd, assailing the judgment and decree dated 31.12.2013 made in M.V.O.P. No.2643 of 2010 on the file of the Chairman Motor Accident Claims Tribunal cum XIV Additional Chief Judge (Fast Track Court), City Civil Courts, Hyderabad (for short "the Tribunal").

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

4. The claimant filed a petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.25,00,000/- for the injuries sustained by him in a motor accident that occurred on 05.09.2010. According to the petitioner, on 05.09.2010 at about 11:00 a.m., when he was riding motorcycle bearing No.AP 29 F 5211 from Kukatpally to

Gowlipura, slowly on the left side of the road along with pillion rider by name C.G. Chowadary and when they reached near Moosapet bus depot the driver of one Eicher DCM lorry bearing No.AP 28 X 5342 came at high speed in a rash and negligent manner and dashed the petitioner's motorcycle and as such they fell down. The petitioner sustained fracture to his left leg, injury to left hand, shoulder and blunt injuries to all over the body. Immediately, they were shifted to Neelima hospital in 108 ambulance. Later he was admitted in Prime Hospital and he was operated and inserted steel plates. The petitioner is completely bed ridden and lost his income. He is incurring huge expenditure towards his hospitalization, medical treatment extra nourishment and transport etc. Therefore he preferred the present appeal to enhance the compensation.

5. While the respondent No.1 remained *ex parte,* the respondent No.2 filed counter, denied the averments of the petitioner and submitted that all allegations made in this petition are neither true nor correct and hence deserves to be dismissed in limini and seeks protection under section 134(c) of Motor Vehicles Act, 1988. It is also contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

6. The Tribunal after considering the claim and the counter filed by respondent No.2 and after evaluation of the evidence brought on record, allowed the O.P. in part awarding a sum of Rs.7,92,000/- together with interest at 7.5% per annum, to be paid by respondent Nos.1 and 2 jointly and severally. Challenging the same, the claimant as well as the insurance company filed the present appeals.

7. Heard and perused the material available on record.

8. Learned counsel for the claimant has contended that though the claim was for Rs.25,00,000/-, the Tribunal has granted a meagre amount of Rs.7,92,000/- without considering the fact that the claimant used to earn Rs.30,000/- per month as he was working as recovery agent in Andhra Bank. In the absence of any contra evidence adduced by the insurance company, the Tribunal ought to have awarded the total compensation as claimed by the claimant. It is further contended that due to the accident, the claimant has lost his job and income. He became disabled and he is not in a position to do any gainful work. He is the only earning member in his family. In his cross examination he stated that the Gurukrupa agencies was registered and run by him and he did not file any registration certificate and proof of running of the said agency.

9. On the other hand, learned Standing Counsel appearing for the Insurance Company has contended that the offending vehicle is not having proper records at the time of alleged accident and the Tribunal had erroneously awarded the compensation, which is against the terms and conditions of the policy. It is further contended that the Tribunal has erred in considering the fact that the accident was occurred due to the contributory negligence on the part of the claimant.

10. A perusal of the impugned judgment discloses that the Tribunal has framed issue No.1 as to *whether the accident had occurred due to rash and negligent driving of the vehicle by its driver*, and after considering the evidence of P.W.1 coupled with the documentary evidence, Ex.A1, F.I.R., Ex.A2 - charge sheet and Ex.A3-certified copy of injury certificate, the Tribunal has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the DCM Lorry and has answered the issue in favour of the claimant and against the respondents. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident was occurred due to the rash and negligent driving of the driver of DCM Lorry.

11. As far as Issue No.2 *whether the offending vehicle driver was having effective driving license at the time of the alleged accident* is concerned R.W.1 in his evidence stated that

the driver who was driving the offending vehicle at the time of accident was not holding license at all and Ex.B3 copy of investigation marked by the R.W.1 mentions that 'as per charge sheet the name of the driver L.Durgesh R/o Medak District (AP), copy of driving licence is not available in police record'. Therefore, R.W.1 and Ex.B3 are not sufficient to come to a conclusion that the driver of the offending vehicle is not having effective driving license at the time of the alleged accident. Accordingly, the issue No.2 is answered.

12. Insofar as the contention of the learned Standing Counsel for the Insurance Company that the offending vehicle is not having proper records at the time of alleged accident is concerned, respondent No.2 filed Ex.B1 copy of insurance policy and the same was in force at the time of the accident and there is no evidence on behalf of the respondent No.2 that the vehicle is not having valid permit and fitness at the time of the accident. Therefore from the above facts, it can be drawn inference that the offending vehicle is having proper records at the time of alleged accident. Such being the case, the insurance company cannot escape from liability of payment of compensation.

13. Coming to the quantum of compensation, as per the evidence of P.W.2 the Tribunal has taken the disability of the

petitioner as 30% and the annual income of the petitioner is taken as Rs.1,80,000/- and as the petitioner's age is taken as 41 years the appropriate multiplier is 14. If Rs.1,80,000/- is multiplied by 14 it comes to Rs.25,20,000/-. The Tribunal has taken the percentage of disability of the petitioner as 30% and the loss of earnings of the petitioner would come to Rs.7,56,000/- which is meagre. Therefore, this court is inclined to enhance the amount of loss of earning by 30,000/- and the total loss of earnings would come to Rs.7,86,000/-. Even though the petitioner did not file any documents to prove the medical expenses, he might have spent some amount towards medical expenses and extra nourishment. So, the tribunal has awarded Rs.5,000/- towards medical expenses and extra nourishment, Rs.20,000/- towards operation for removal of implant. This Court is inclined to enhance the amount of compensation by Rs.30,000/- towards pain and suffering as the Tribunal has awarded Rs.10,000/- which is meagre. So the petitioner is entitled to an amount of Rs.40,000/- towards pain and suffering and he is further entitled to an amount of Rs.1,000/- towards transportation expenses. Thus, in all the claimant is entitled to Rs.8,52,000/- towards compensation.

14. Accordingly, M.A.C.M.A.No.4230 of 2014 filed by the Insurance Company is dismissed and the

M.A.C.M.A.No.2458 of 2014 filed by the claimant is allowed in part enhancing the compensation amount awarded by the Tribunal from Rs.7,92,000/- to Rs.8,52,000/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of the judgment passed by the Tribunal till the date of realization, payable by respondent Nos.1 and 2 jointly and severally. The Insurance Company is directed to deposit the entire compensation amount within a period of two months from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the entire amount without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SMT. M.G.PRIYADARSINI, J

14.12.2022
PSW

HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

<u>M.A.C.M.A. Nos.2458 and 4230 of 2014</u>

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