

THE HON'BLE JUSTICE G. SRI DEVI

M.A.C.M.A. No. 2336 of 2007

JUDGMENT:

This appeal is filed by the appellant-The New India Assurance Company Limited, assailing the order and decree, dated 18.07.2007, passed in O.P. No. 350 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy.

During the pendency of the present appeal, the claimant-respondent No. 1 herein died and therefore, his legal representatives were brought on record as respondent Nos. 3 to 8 in the appeal. The claimant, respondent No. 1 herein, filed the O.P. claiming compensation of Rs.6.00 lakhs for the injuries sustained by him in the accident that occurred on 03.03.2006. According to the claimant, on 03.03.2006 at about 10:15 p.m. while he was returning to his house after attending his duty, by walk, and when he reached infront of PSML Company Guest House on National Highway No. 9, the crime vehicle i.e., Tanker lorry bearing registration No. MH-04/CG-908, owned by respondent No. 1, insured with the appellant herein, being driven by its driver, in a rash and negligent manner at high speed, dashed against him, as a result of which, he sustained crush injuries on both legs, grievous injury on hand and multiple injuries all over body. According to him, initially he was shifted to Community Health Centre, Sadasivpet and later admitted in

the Gandhi Hospital, Secunderabad as inpatient where, his both legs were amputated. He incurred Rs.8.00 lakhs towards treatment and medicines. At the time of accident, he was 45 years and was working in PSML, Sadasivpet and earning Rs.5,000/- per month. Therefore, he made a claim for Rs.6.00 lakhs towards compensation. Considering the claim and the written statement filed by the Insurance Company, the learned Tribunal has allowed the O.P. in part and awarded total compensation of Rs.4,05,000/- with 7.5% interest per annum holding the owner of the vehicle and the insurance company jointly and severally liable to pay the compensation.

Now, the grounds raised by the learned Standing Counsel for the appellant are that the learned Tribunal erred in taking the loss of income of claimant as 100%; that in the absence of any proof produced by the claimant showing his monthly income, the Tribunal ought to have taken the notional income at Rs.15,000/- per annum. It is contended that the accident had occurred due to the contributory negligence on the part of the claimant and therefore, he is not entitled for the compensation.

On the other hand, learned counsel appearing for respondent No. 1-claimant, contended that the compensation awarded by the learned Tribunal is just and reasonable and needs no interference by this Court.

Heard the learned Standing Counsel for the appellant and the learned counsel for the claimant-respondent No. 1 herein. Perused the material available on record.

As seen from the record, due to the accident, both the legs of the claimant were amputated and he was unable to work with his left hand due to the injury sustained in the accident. Nothing contra was elicited in his cross-examination. The evidence of P.W.2, coupled with Ex.A.3, injury certificate, A.5, discharge record issued by Gandhi Hospital, and Ex.A8, Physical Handicapped certificate clearly show that both the legs of claimant were amputated and he sustained 80% disability. Although the claimant did not produce any documentary evidence to support his claim that he was working as part-time Scavenger and earning Rs.2,080/- each from both the Units of M/s. Priyadarshini Spinning Mills Limited apart from earning Rs.1,000/- from the colony inhabitants, the learned Tribunal has rightly fixed the income of the claimant at Rs.3,000/- per month. As the claimant had suffered 80% disability, the amount of Rs.3,60,000/- granted by the Tribunal towards future loss of earnings, cannot be said to be higher side. In fact, the amounts of Rs.8,000/- towards simple injuries; Rs.2,000/- towards medical bills; Rs.5,000/- towards pain and suffering; and Rs.10,000/- towards extra-nourishment are meagre and

therefore, the compensation awarded by the learned Tribunal needs no interference.

Coming to the contention of the learned Standing Counsel for the appellant that there was contributory negligence on the part of the claimant in occurring the accident, the learned Tribunal, at para No. 6, while deciding the issue No. 1, had observed as under:-

“6....Police registered a case against the said driver. In his cross-examination, except suggesting that the accident occurred due to his negligence and without any negligence of driver of said lorry, which he denied, the second respondent did not adduce any evidence prove their plea that the accident occurred due to fault of petitioner. On the other hand, to corroborate his above version, the petitioner filed Exs.A1, A2 and A4. Ex.A1 is the FIR in Crime No. 49/2006 of P.S. Sadasivpet, basing on which, the Sub-Inspector of Police, Sadasivpet investigated into the case, conducted Ex.A4 Scene of Offence Panchanama and filed Ex.A2 Charge Sheet for the offence punishable under Section 338 IPC against the driver of lorry MH-04/CG-908....”

Thus, although P.W.1 specifically attributed negligent driving on the part of the driver of the offending vehicle, the appellant-Insurance Company did not choose to rebut the said evidence in his cross-examination. Therefore, this Court is not inclined to disturb the cogent finding of the learned Tribunal even with regard to the manner of the accident and the negligence on the part of the driver of the offending vehicle.

Hence, the M.A.C.M.A. fails and the same is accordingly dismissed. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE G. SRI DEVI

17.02.2022
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THE HON'BLE JUSTICE G. SRI DEVI

M.A.C.M.A. No.2336 of 2007

DATE: 17-02-2022