

THE HON'BLE SMT. JUSTICE P.MADHAVI DEVI

M.A.C.M.A. No.2441 of 2016

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M.A.C.M.A. No.2605 of 2016

COMMON ORDER:

1. These two appeals are filed by both the injured claimant as well as the Insurance Company against the award passed by the Tribunal in M.V.O.P.No.2898 of 2011 dated 21.04.2016.

2. The brief facts leading to the filing of these appeals are that the injured claimant/appellant was injured in a motor vehicle accident that occurred on 24.10.2011 and received multiple injuries, such as, fractures to his right leg, head injury and blunt injuries all over the body. The petitioner filed O.P seeking compensation of Rs.16,00,000/- (Rupees Sixteen lakhs only) for the injuries sustained by him in the accident.

3. The lower court has awarded compensation of Rs.11,44,000/- (Rupees Eleven lakhs forty four thousand) only. Seeking enhancement of the said compensation to Rs.25,00,000/- (Rupees Twenty five lakhs only), the present

appeal along with an Interlocutory Application has been filed.

4. The appellant/injured claimant is seeking enhancement of compensation under the head 'Disability'.

5. The learned counsel for the appellant submitted that because of the fractures received by him, the petitioner/injured claimant is unable to walk without support of a stick and there is also shortening of right leg by 1 cm resulting in his limping and he would not be able to lift weight and sustained 40% disability, which is partial but permanent in nature. The same has been considered by the Tribunal and awarded compensation @ 40%. However, the petitioner in this appeal submitted that loss of earnings is to be provided at 100% as he lost his job and he is unable to perform his duties properly.

6. The learned Standing Counsel for the Insurance Company is also heard. He submits that after taking into consideration, the disability certificate issued by the Doctor, the lower Court has granted 40% compensation for disability and therefore, no further compensation need be granted. After hearing both the parties and after considering that no

further evidence is produced by the petitioner with regard to the disability @ 100%, this Court is of the considered opinion that the contention of the injured claimant/appellant cannot be accepted. It is accordingly rejected.

7. The other ground, on which, the petitioner is claiming enhancement is the monthly income of the injured. According to the learned counsel for the injured claimant, the injured has completed his MBA with 69% marks and had joined IIFL and was drawing a monthly salary of Rs.15,000/- and other incentives totally Rs.20,000/- per month at the time of the accident and would have earned much more subsequently. He submitted that his colleague employee who was examined and he has given his evidence is drawing Rs.45,000/- per month. He placed reliance upon the judgment of this Court in case of ***B.Ramulamma vs Venkatesh Bus Union, Lingarajapuram, Bangalore and another***,¹ wherein, it was held that with regard to the persons, who have completed M.Tech., MBA., etc., their income should be taken at a sum of Rs.15,000/- per month.

¹ 2009 (6) ALD 684 (DB)

8. Per contra, the learned Standing Counsel for the Insurance Company submitted that neither the claimant nor his colleague have filed any evidence to the effect that they are working with IIFL and that they were drawing the salary that they have claimed and therefore, the claim of the appellant cannot be accepted.

9. This Court finds that there is no dispute with regard to the educational qualification of the injured. In view thereof, relying upon the judgment of this Court in case of B. Ramulamma vs Venkatesh Bus Union (supra), monthly income of the injured is taken @ Rs.15,000/- and the compensation is to be computed accordingly at 40% disability/loss of earning capacity.

10. It is also argued that the lower Court also has not granted any loss of compensation during the period of treatment and recuperation. Therefore, the compensation towards loss of earnings for a period of six months is also awarded.

11. As regards the compensation towards loss of amenities, marriage prospects are concerned, the learned

counsel for the petitioner submits that no compensation has been awarded. The learned counsel for the Insurance Company submits that the injuries caused to the petitioner have been healed and therefore, there is no cause for loss of amenities. However, it is seen from the judgment of the lower Court that the petitioner sustained injuries resulting in shortening of his right leg and he is limping. Therefore, disability caused to the petitioner affected his marriage prospects and in loss of amenities. Therefore, Rs.1,00,000/- (Rupees One lakh) only is awarded towards loss of amenities and marriage prospects.

12. As regards, the appeal filed by the Insurance Company, it is seen that though a number of grounds have been raised, the basic grievance of the Insurance Company is that the driver of the vehicle was not having a valid driving licence to drive the vehicle i.e., he was holding license to drive LMV non-transport vehicle, whereas, the crime vehicle is transport vehicle and that the Tribunal has erroneously fastened the liability on the Insurance Company to pay and recover the same from the owner of the vehicle. However, in the decision of the Hon'ble Supreme Court in **Mukund**

Dewangan vs Oriental Insurance Company Limited², it was held that as long as the driver possesses a licence to drive a category of vehicles, he is eligible for driving a transport vehicle of the same category and therefore, he is entitled to compensation in case of an accident. Hence, it cannot be construed that the driver has violated policy condition. Therefore, the grounds with regard to the said issue are rejected.

13. The learned counsel for the appellant submitted that a licence to drive Light Motor Vehicle also includes licence to drive Light Motor Vehicle Transport Vehicle. The other grounds related to the quantum of compensation awarded by the lower Court. Since these issues have already been dealt with, in the appellant's appeal the appeal of the Insurance Company is dismissed.

14. In the light of the above mentioned discussion, the injured claimant is entitled to the following amounts:

Sl.No.	Head	Compensation awarded
1.	Income	Rs.15,000/- per month

² (2017) 14 SCC 663

2.	Loss of earnings during the period of treatment	Rs.90,000/- (Rs.15,000/- x 6)
3.	Pain & Sufferings	Rs.50,000/-
4.	Extra-nourishment, travelling and attendant charges	Rs.1,00,000/-
5.	Future Operation	Rs.30,000/-
6.	Loss of earnings on account of 40% disability	Rs.12,96,000/- (Rs.15,000/-x12x18x40%)
7	Loss of amenities and marriage prospects	Rs.1,00,000/-
	Total	Rs.16,66,000/-

15. In the result, the award dt.21.04.2016 in M.V.O.P.No.2898 of 2011 on the file of the Motor Accident Claims Tribunal-cum-XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad is modified by awarding a total compensation of Rs.16,66,000/- (Rupees Sixteen lakhs and sixty six thousand only) with costs and interest thereon at 7.5% per annum from the date of the claim petition till the date of realization against both the respondents jointly and severally. As the compensation

payable to the claimant/injured as per law was found to be higher than the original claim of Rs.16,00,000/-, the enhanced compensation of Rs.66,000/- is granted subject to payment of Court Fee thereon. The respondent Insurance Company is directed to deposit the amount of compensation within a period of 60 days from the date of receipt of a copy of this judgment after giving credit to the deposit of amount, if any, already made. On the deposit being made, the claimant is permitted to withdrawn the same without furnishing any security.

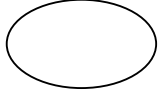
16. Accordingly, MACMA No.2441 of 2016 filed by the Insurance Company is disposed of. MACMA No.2605 of 2016 filed by the claimant/injured is partly allowed. There shall be no order as to costs in these appeals.

17. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.MADHAVI DEVI

Date: 24.06.2022.

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THE HONOURABLE SMT JUSTICE P. MADHAVI DEVI

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