

HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A.Nos.2309 of 2015 and 2152 of 2016

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. Dissatisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad, made in O.P.No.1061 of 2010, dated 24.05.2014, the claimant preferred MACMA No.2309 of 2015. Whereas, MACMA No.2152 of 2016 is preferred by the Reliance General Insurance Company Limited, respondent No.2 before the Tribunal, challenging the very same order and decree of the Tribunal on the ground that the compensation awarded is excessive and exorbitant.

3. For the sake convenience, the parties, hereinafter, will be referred to as per their array before the Tribunal.

4. According to the pleadings in the O.P. filed by the claimant, on 08.04.2009, at about 20.00 hours, while the claimant was proceeding on his motorcycle and when he reached near Anajipuram Village, Mothkur Mandal of Nalgonda

District, the offending vehicle i.e., tractor and trailer bearing NO. AP 24F 1851 & 1852, owned by respondent No. 1, insured with respondent No. 2, being driven by its driver in a rash and negligent manner, dashed the motorcycle, as a result of which, the claimant fell down and sustained grievous injuries. He had taken treatment at various hospitals, underwent operation for fracture injuries and sustained disability. Therefore, he laid a claim for Rs.6,50,000/- against the respondents towards compensation under various heads.

5. Before the tribunal, while the respondent No. 1 stood ex parte, the respondent No. 2 filed its counter denying the manner of accident as projected by the claimant, income, avocation of the claimant. The learned tribunal, having considered the claim petition, counter, oral and documentary evidence brought on record, allowed the O.P. awarding compensation of Rs.6.50 lakhs.

6. Heard both sides and perused the material available on record.

7. The learned Counsel for the claimant-appellant in MACMA No.2309 of 2015 contends that the learned Tribunal having held that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle and

having arrived at the total compensation of Rs.11,26,000/-, erred in restricting the compensation to the amount claimed by the claimant. It is contended that on account of fracture injuries, the claimant sustained 90% permanent disability as his right hand was not working. P.W.2, the Orthopedic Surgeon at Sai Vani Hospital, Hyderabad, where the claimant took treatment, deposed that ORIF was done for fracture humerus K-Wire fixation for right clavicle and coracoil process by him and in spite of proper treatment, the claimant is suffering with permanent disability at 90%. Even P.W.5, the Civil Surgeon, R.M.O., at Kamala Nehru Area Hospital, Nagarjuna Sagar, deposed that the claimant is suffering with 90% disability. The said evidence is further supported by Ex.A.5, disability certificate, issued by the Medical Board. Therefore, taking into consideration of 90% disability and considering Ex.A.13, salary certificate, which is supported by P.W.4, the tribunal ought to have awarded the just and reasonable compensation irrespective of the claim made in the O.P.

8. On the other hand, the learned Standing Counsel for the Insurance Company (appellant in MACMA No.2152 of 2016) has contended that the Tribunal grossly erred in granting a sum of Rs.6.50 lakhs towards compensation; that the tribunal erred in

taking the monthly income of the claimant at Rs.4,500/-; and that the tribunal ought not to have assessed the disability at 100%.

9. There is no dispute with regard to the manner of the accident and the rash and negligent driving of the offending vehicle by its driver in causing the accident. As regards the quantum of compensation, the evidence of doctors i.e., P.Ws.2 & 5 is to the effect that the claimant has suffered fracture of right zygomatic maxillary complex with midipaltal split hematoma right zygomatic arch with facial laceration. It is the evidence of P.W.2 that under general anesthesia ORIF was done for fracture humerus K-Wire fixation for right clavicle and coracoil process by him and in spite of treatment, the claimant's right hand was not working. Ex.A.5 is the disability certificate issued by the competent Medical Board, which discloses that the claimant has suffered 90% permanent disability. Thus, as the medical evidence clearly establishes that the claimant has suffered 90% permanent disability, this Court is inclined to accept the same.

10. As regards the income, according to the claimant, he was working in Kapil Chit Fund Pvt. Ltd., and was drawing a salary of Rs.6,150/- per month and produced Ex.A.13 salary certificate issued by Kapil Chit Fund Pvt. Ltd. To substantiate Ex.A.3,

P.W.4 was examined, who deposed that the claimant was being paid Rs.6,150/- per month as salary. Therefore, his monthly income can safely be taken as Rs.6,000/- per month. As seen from the record, the claimant was 26 years at the time of the accident and therefore, to assess the loss of income on account of permanent disability, the appropriate multiplier is 17. Thus, the loss of dependency of the claimant on account of permanent disability at 90% is determined at Rs.11,01,600/- (Rs.6,000/- x 12 x 17 x 90/100). That apart, as seen from Ex.A.6, hospital bill issued by Sai Vani Hospital, Hyderabad, the claimant had incurred Rs.1,45,000/- and as per Ex.A.12, medical bills, he had spent Rs.5,000/- towards purchase of medicines. Therefore, considering Exs.A.6 and A.12, the claimant is awarded Rs.1,50,000/- towards treatment and medicines. That apart, considering the fact that the claimant had suffered two grievous injuries, he is awarded a sum of Rs.25,000/- under the head of injuries. So also, under the head of transportation, attendant charges and extra nourishment, the claimant is awarded a sum of Rs.15,000/-. Thus, in all, this Court is inclined to award a sum of Rs.12,91,600/-, as against the amount of Rs.6,50,000/- awarded by the tribunal.

11. At this stage, the learned Standing Counsel for the insurance company, respondent No. 2 contends that the compensation now arrived at by this Court is more than the amount what was claimed and what was determined by the tribunal and therefore, prays this Court to restrict the compensation to the amount what was claimed by the claimant. In this regard, it is to be observed that In ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***¹, the Apex Court while referring to the decision in ***Nagappa Vs. Gurudayal Singh***² held as under:

“It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in [Nagappa vs. Gurudayal Singh](#) (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident.”

In view of the Judgments of the Apex Court referred to above, the claimant(s) is/are entitled to claim more amount than what was claimed originally. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimant

¹ (2011) 10 SCC 756

² 2003 ACJ 12 (SC)

is a paramount consideration, the Courts should always endeavour to extend the benefit to the claimant(s) to a just and reasonable extent.

12. In the result, the appeal preferred by the claimant i.e., MACMA No.2309 of 2015 stands allowed by enhancing the compensation amount awarded by the tribunal from Rs.6,50,000/- to Rs.12,91,600/- to be paid by the respondents jointly and severally. The enhanced amount shall carry interest at the rate of 7.5% per annum from today till the date of realization. The respondents are directed to deposit the amount within a period of two months from the date of receipt of a copy of this order. Consequently, the appeal preferred by the Insurance Company i.e., MACMA No.2152 of 2016 stands dismissed. There shall be no order as to costs.

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

JUSTICE M.G.PRIYADARSINI

6th December, 2022
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