

HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.Nos.694 of 2017 and 1272 of 2018

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.694 of 2017 filed by the Oriental Insurance Company Limited challenging the quantum of compensation and M.A.C.M.A.No.1272 of 2018 filed by the claimant seeking enhancement of compensation, are directed against the very same award and decree, dated 31.05.2016 made in M.V.O.P.No.1233 of 2012 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-XIV Additional Chief Judge (Fast Track Court), City Civil Courts, Hyderabad (for short “the Tribunal”).

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

3. The facts, in issue, are as under:

The claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 against the respondent Nos. 1 and 2, claiming compensation of Rs.6,00,000/- for the injuries sustained by the petitioner in the accident. According to the petitioner, he was aged 50

years, used to earn Rs.8,000/- per month as a Security Guard at Reddy Labs in the premises of Srinivas Complex, Ameerpet. On 17.04.2011 at about 4-00 p.m. while he was returning from his duty, he boarded an RTC bus at Ameerpet and got down at Karimikanagar bus stop and proceeding towards his residence by walk, in the mean time Setwin bus bearing No. AP 09 Y 7493 being driven by its driver came in a rash and negligent manner and hit the petitioner near Tirumala Wine Shop, due to which, he sustained grievous injuries on his left arm. Initially he was shifted to Gandhi Hospital for treatment, and after first aid he was shifted to NIMS, where he was treated as outpatient for one day as the doctors demanded him to Rs.50,000/- towards advance thereafter he was admitted as inpatient and commenced the treatment as inpatient. Since the petitioner is poor, he could not offer costly treatment at NIMS and he went to Osmania General Hospital and got admitted as inpatient and took treatment. Subsequently he took treatment as outpatient at Osmania General Hospital as well as other doctors at Krishnanagar, because the amputated stump did not heal and that he spent Rs.20,000/- towards treatment, Rs.5,000/- towards attendant charges and Rs.5,000/- for transportation. After the accident, his left hand was amputated up to shoulder joint and as such,

he got 90% disability and lost his job. Therefore, he is seeking compensation of Rs.6,00,000/- against the respondent Nos.1 and 2, who are owner and insurer of the offending vehicle.

4. Respondent No.1 remained ex parte; Respondent No.2 filed counter disputing the manner in which the accident took place, nature of injuries sustained by the petitioner and the treatment taken by him. It is further contended that the compensation claimed is excessive and exorbitant and prayed to dismiss the claim petition.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. *Whether the accident took place due to the rash and negligent driving of the setwin bus bearing No. AP 09 Y 7493 causing injuries to the petitioner?*
2. *Whether the petitioner is entitled for compensation, if so, to what extent and from whom?*
3. *To what relief?*

6. In order to prove the issues, PWs.1 to 6 were examined and Exs.A1 to A15 were marked on behalf of the petitioner. On behalf of the respondent No.2, no witnesses were examined, however, copy of insurance policy was marked as Ex.B1.

7. After considering the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the setwin bus bearing No. AP 09 Y 7493 and awarded the total compensation of Rs.22,44,662/- with costs and interest at 7.5% per annum from the date of petition till the date of deposit against the respondent Nos.1 and 2 jointly and severally.

6. Heard the learned counsel on either side and perused the material available on record.

7. The main contention raised by the learned Standing Counsel for the respondent No.2-Insurance Company is that the compensation awarded by the Tribunal is highly excessive and prays to set aside the Order passed by the Tribunal.

8. Learned Counsel for the petitioner has submitted that though the claimant established that the petitioner has sustained permanent disability, the Tribunal has awarded very meager amount.

9. With regard to the manner of accident, there is no dispute. However, considering the evidence of PW-1 coupled with the documentary evidence available on record, the Tribunal rightly held

that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle.

10. With regard to the quantum of compensation, according to the petitioner, he sustained permanent disability due to the amputation of left upper limb up to the shoulder. In support of his case, PW-2, Doctor who treated the petitioner deposed that he performed surgery under general anesthesia and his left shoulder was disarticulated. PW.3 deposed that on 9.3.2016 their prosthetist and Orthotist examined the petitioner and issued Ex.A14 estimation for the left shoulder disarticulation, MYO electric system, which was estimated at Rs.4,93,950/- for artificial limb. PW-4 deposed that the petitioner was working in their organization as a security guard since 2002 and continued till the date of accident and he was drawing salary of Rs.8,800/- per month. PW-5 deposed that he examined the petitioner and assessed the disability as 80% and the petitioner cannot perform any activity of daily life with left upper limb. Therefore, through the evidence of PWs.2 to 5, it is clearly established that the petitioner, who is working as security guard in PW-4's organization has sustained permanent disability at 80% due to amputation of left upper limb due to the injuries caused in the accident. Further there is no

rebuttal evidence produced by the respondent No.2-Insurance Company. Therefore, considering the disability sustained by the petitioner, the Tribunal has taken the income of the petitioner at Rs.8,800/- per month, added 30% towards future prospectus and by applying multiplier '13', awarded an amount of Rs.14,27,712/-. Further the Tribunal also awarded the following amounts under different heads;

1. Medical expenses and extra : Rs. 20,000-00
nourishment
2. Pain and suffering : Rs.1,50,000-00
3. Loss of amenities, happiness and : Rs.1,50,000-00
enjoyment of life
4. Cost of artificial limb : Rs.4,93,950-00
5. Transport charges : Rs. 3,000-00

Thus in all the Tribunal awarded an amount of Rs.22,44,662/- under all counts, which is just and reasonable. Therefore, in view of the above discussion, this Court is of the opinion that there are no valid grounds to interfere with the cogent findings given by the Tribunal and both the appeals are liable to be dismissed.

12. Accordingly both the M.A.C.M.As. are dismissed. There shall be no order as to costs.

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

M.G.PRIYADARSINI,J

05.12.2022

pgp