THE HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A.Nos.8 of 2017 and 1592 of 2018

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.8 of 2017 filed by the appellant and M.A.C.M.A.No.1592 of 2018 filed by the United India Insurance Company Limited assailing the quantum of compensation, are directed against the very same order and decree, dated 21.11.2016 made in O.P.No.236 of 2015 on the file of the Chairman, the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Asifabad (for short "the Tribunal").

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

3. Appellant is the petitioner in the main O.P. According to the petitioner, on 23.02.2014 at about 12.30 p.m., he was traveling as a passenger in a jeep bearing No.AP 25 D 7676 from chennur village to Neelwar village and when it reached near Kaldampaly village at Neelwai Forest area, suddenly one Auto trolley bearing No.AP 01 Y 3615 owned and driven by respondent No.1 and insured with respondent No.2, came in rash and negligent manner with

high speed and dashed the jeep in which petitioner was traveling, due to which he sustained two fractures and multiple injuries all over the body. Immediately, he was shifted to Government Hospital at Chennur and from there he was shifted to Srinivas Orthopedic Hospital, Mancherial, where he was treated as inpatient. Due to the said accident, the petitioner sustained two fractures and other multiple injuries all over the body. For the treatment of the said injuries, he spent Rs.30,000/- towards medical expenses. According to the petitioner, he was working as mason and earning Rs.12,000/- per month. Due to the injuries sustained by him, he became permanently disabled and lost his income. Thus, the petitioner is claiming compensation of Rs.6,00,000/- for the injuries sustained by him against the respondents 1 and 2 jointly and severally.

4. While the respondent No. 1 remained ex parte, Respondent No. 2 filed counter disputing the manner of accident, nature of injuries sustained by the petitioner, age, avocation and income of the petitioner and further contended that the claim is exorbitant and sought for dismissal of the claim petition.

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

> 1. *“Whether the accident took place as alleged by the petitioner on 23.02.2014 at about 12.30 hours, near Kalampally village, at Neelwai Forest area, as alleged by the petitioner due to rash and negligent driving by the driver of Auto trolley bearing No.AP 01 Y 3615 of respondent No.1 or whether there was any contributory negligence on the part of the petitioner?*
> 2. *Whether the petitioner suffered injuries and disability as alleged?*
> 3. *Whether there was any insurance coverage for the driver of Auto trolley bearing No.AP 01 Y 3615 and if so, does the policy cover the risk of petitioner and if so, was there any breach of policy condition alleged by the respondent?*
> 4. *Whether the petition is bad for non-joinder of owner and insurer of the jeep bearing No.AP 25 D 7676?*
> 5. *Whether the petitioner is entitled to any compensation, if so, what extent and against whom?*
> 6. *To what relief?”*

6. In order to prove the issues, the petitioner examined himself as PW.1 and Exs.A1 to A7 got marked on behalf of the petitioner. On behalf of respondent No.2, no oral or documentary evidence is adduced.

7. On considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.85,000/- towards compensation to the claimant along with costs and interest @ 9% per annum from the

date of filing the petition till realization against the respondents jointly and severally.

8. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the respondent Nos.1 and 2-Insurance Company. Perused the material available on record.

9. The learned counsel for the appellant-claimant has submitted that although the claimant, by way of evidence of P.Ws.1 to 3 and Exs.A.1 to A.7, established the fact that the petitioner sustained 75% permanent disability, due to the injuries received by him in the accident, but the Tribunal discarded the said disability of the petitioner and awarded very meager amount under various heads.

10. The learned Standing Counsel appearing on behalf of respondent-Insurance Company sought to sustain the impugned award of the Tribunal contending that considering the manner of accident and the nature of injuries sustained by the petitioner, the learned Tribunal has awarded reasonable compensation and the same needs no interference by this Court. Furthermore, he vehemently contended that even the driver of the auto was not holding any valid driving licence to drive the auto and since there

was violation of terms of the policy, the respondent No. 1 alone is liable to pay the compensation and no liability can be fastened on the insurance company. It is lastly contended that the Tribunal erred in awarding high interest rate at 9% p.a., against prevailing rate @ 7.5% p.a.

11. Admittedly, there is no dispute with regard to the manner of accident. However, the Tribunal after evaluating the evidence of PW.1 coupled with the documentary evidence available on record held that the accident occurred due to rash and negligent driving of the driver of Auto bearing No.AP 01 Y 3615. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the offending Auto trolley.

12. As per the medical evidence available on record, the claimant sustained two fractures and other multiple injuries all over the body due to the said accident. Immediately after the accident, he was shifted to Government Hospital, Chennur, for treatment and after first aid, he was shifted to Srinivas Orthopedic Hospital, Mancherial, for better treatment and he spent Rs.30,000/- towards his treatment and medical expenses. Ex.A3,

certified copy of Injury certificate shows that the petitioner has sustained two grievous fractures and multiple injuries all over the body. Considering the nature of injuries sustained by the petitioner, the tribunal rightly awarded an amount of Rs.50,000/- for two grievous injuries. Further, the petitioner filed Ex.A6 Disability Certificate, which shows that PW-1 is suffering from 75% disability on account of the injuries sustained by him and the same was not considered by the Tribunal for the reason that the Ex.A6, disability certificate was a computer generated document, issued in Government hospital while conducting camps. Further, the tribunal has not granted any amount towards medical expenses by presuming that the petitioner took treatment under Arogya Sri Scheme of State Government. However, considering the two grievous fractures sustained by the petitioner and Exs.A3, Injury Certificate and A6, Disability Certificate, this Court is inclined to fix the disability at 30%.

13. Insofar as the quantum of compensation is concerned, according to the petitioner, he is 40 years old and earning Rs.12,000/- per month by doing mason work. However, no document is produced in order to prove the

same. Hence, this Court is inclined to take Rs.5,000/- towards his monthly income as the work of mason is a skilled work. Since the petitioner was 40 years old at the time of the accident, as held by the Tribunal, the appropriate multiplier is '14' as per the guidelines laid down by the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***[1]**.** Adopting multiplier '14', the total loss of income comes to Rs.2,52,000/- (Rs.5,000 x 12 x 14 x 30/100). Though he took treatment under Arogya Sri Scheme of State Government, he might have incurred some amount towards medical expenses. For which reason, Rs.10,000/- is granted towards medical expenses. That apart, the claimant is entitled to Rs.50,000/- towards two grievous fractures, Rs.20,000/- towards pain and sufferings, Rs.20,000/- towards extra nourishment, transport and attendant charges. Thus, in all, the claimant is entitled to Rs.3,52,000/-.

14. With regard to the liability, admittedly, the tribunal has rightly held that there is insurance coverage to the Auto trolley which covers the risk of the petitioner and the insurance company is liable to pay compensation. As regards the rate of interest is concerned, the rate of interest

[1] 2009 ACJ 1298 (SC)

is reduced from 9% to 7.5% per annum on the compensation as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others[2].**

15. Accordingly, while dismissing M.A.C.M.A.No.1592 of 2018 filed by the insurance company, the M.A.C.M.A.No.8 of 2017 filed by the claimant is allowed by enhancing the compensation awarded by the Tribunal from Rs.85,000/- to **Rs.3,52,000/-.** The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization, payable by respondent Nos. 1 and 2 jointly and severally. Time to deposit the amount is one month from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the amount without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G.PRIYADARSINI

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[2] 2013 ACJ 1403 = 2013 (4) ALT 35

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