

THE HON'BLE SRI JUSTICE PULLA KARTHIK

M.A.C.MA. No.1741 of 2007

JUDGMENT:

This Motor Accidents Civil Miscellaneous Appeal is filed by the claimant, aggrieved by the Order and Decree passed in MVOP.No.451/2004 dated 06.12.2006 on the file of Chairman, III Motor Accidents Claims Tribunal, Warangal, wherein the Tribunal had awarded a compensation of Rs.1,95,200/- as against the claim of Rs.6,55,000/- for the injuries sustained by the appellant in a motor vehicle accident that occurred on 19.10.2003.

2. The case of the appellant in brief:

On 19.10.2003, he boarded an auto bearing No. AP36 U 1437 and going to Nekkonda side from Narsampet and at about 7.00 pm, when it reached near Chandrugonda cross roads, another auto bearing No. AP 28 V 4260 came in opposite direction driven at high speed, came to wrong side and hit their auto, due to which, he sustained fracture to both bones of right leg, grievous internal injury on right

knee and other injuries, that the passengers in the other auto also sustained injuries and fractures. It is pleaded that he was shifted to MGM Hospital, Warangal, where he was treated till 3.11.2003 and was operated upon his right leg and the same was amputated till above the knee and he was advised to take complete bed rest for 4 months. It is pleaded that he is still experiencing heavy pain and mental agony. It is further pleaded that he underwent treatment from 13.11.2003 to 27.11.2003 in Sri Ganesh Orthopaedic Hospital where his leg was again re-amputated and was forced to spend more than Rs.40,000/- for medicine and extra nourishment and due to amputation of his right leg, he became unable to walk, stand and became burden to his family members. It is further pleaded that he was an agricultural labourer, but due to amputation of right leg, he is unable to do that work or any other work and lost his earning capacity.

3. Respondent No.1 was remained exparte before the Tribunal.

4. The 2nd and 3rd respondents/Insurance Company filed its counter denied the above material allegations in the petition and put him to strict proof of the same and contended that the narration of the petitioner shows that the auto No.AP 36 U 1437 and auto No.AP 28 V 4260 came in opposite direction and collided and as such, the petition is bad for non joinder of owner and insurer of other auto No.AP36 U 1437, that they cannot be fastened with liability, unless it is proved that the accident occurred due to negligence of the auto driver for which, they have issued policy and that the driver was having valid license at the time of accident and further disputed that the claim is excessive.

5. Basing on the above pleadings, the Tribunal had framed the following issues for trial:

1. Whether the accident occurred on 19.10.2003 was due to rash and negligent driving of auto bearing No. AP 28 V 4260, driven by its driver as per Section 166 of the M.V.Act?

2. Whether the petitioner is entitled to compensation. If so, to what and from whom?

3. To what relief.

6. The petitioner, to prove his case examined himself as PW1 and exhibited Ex.A1 to Ex.A11, on behalf of the contesting respondent No. 2 and 3. RW1 was examined and exhibited Ex.B1 to B3.

7. On considering the evidence and material on record the Tribunal was pleased to allow the petition in part and awarded the compensation of Rs.1,95,200/- with interest thereon at 7.5% per annum from the date of the filing till the date of realization payable by the respondents jointly and severally which is as under:

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|----|---|---------------|
| 1. | Loss of dependency | Rs.1,04,000/- |
| | (2000x12=24,000-24,000/3=
16,000x13x50%) | |
| 2. | Pain and suffering | Rs.30,000/- |
| 3. | Medical bills | Rs.46,200/- |
| 4. | Attendant charges | Rs.2,500/- |

5.	Loss of earnings (4 months)	Rs.8,000/-
6.	Extra nourishment	Rs.3,500/-
7.	Transportation	Rs.1,000/-
	Total	Rs.1,95,200/-

8. Heard both sides and perused the record.

9. The appellant contends that the Tribunal erred in awarding compensation towards loss of dependency by taking 50% of the disability and further contended that he is entitled to compensation as per medical certificate issued by the medical board i.e. Ex.A5, disability certificate. It is further contended that the Tribunal erred in taking the monthly income of the deceased at Rs.2,000/- towards calculation of loss of income. It is further contended that the Tribunal had awarded meagre amounts towards pain and suffering, attendant charges, transportation and extra nourishment.

10. In contra, the respondent contends that the Tribunal had passed an award on the basis of oral and documentary

evidence and there is no error in the order of the Tribunal and requested to dismiss the appeal.

11. This court has taken note of the submissions made by the respective parties.

12. As per Schedule I part II of Employees compensation Act, 1923, wherein it is prescribed that amputation below middle thigh to 8.89 cms., below knee is to be taken as 60%. Hence, the disability of the petitioner can be taken at 60% for calculation of loss of dependency. As per the apex court judgment in Ramchandruppa's case, the monthly income of the deceased can be taken @ Rs.4,500/- per month for the purpose of calculating the loss of earnings and $\frac{1}{3}$ rd to be deducted towards his personal expenses. As per record, the age of the deceased is 45, hence the applicable multiplier is 13 ($4,500 \times 12 = \text{Rs.}54,000$ - $54,000 / 3 = 36,000 \times 13 = 4,68,000 \times 60\% = 2,80,800$). Thereby the loss of dependency comes to Rs.2,80,800/-. Further the attendant charges awarded by the Tribunal is enhanced from Rs.2,500/- to Rs.3,000/- for four months

i.e. $3,000 \times 4 = \text{Rs.}12,000/-$, Loss of earnings awarded by the Tribunal is enhanced from $\text{Rs.}8,000/-$ to $\text{Rs.}18,000/-$ for four months @ $\text{Rs.}4,500 \times 4 = \text{Rs.}18,000/-$ and extra nourishment awarded by the Tribunal is enhanced from $\text{Rs.}3,500/-$ to $\text{Rs.}10,000/-$, Pain and suffering awarded by the Tribunal is enhanced from $\text{Rs.}30,000/-$ to $\text{Rs.}40,000/-$. The compensation towards medical bills and transportation awarded by the Tribunal are confirmed. The award is as under:

1.	Loss of dependency	$\text{Rs.}2,80,800/-$
2.	Pain and suffering	$\text{Rs.}40,000/-$
3.	Medical bills	$\text{Rs.}46,200/-$
4.	Attendant charges	$\text{Rs.}12,000/-$
5.	Loss of earnings (4 months)	$\text{Rs.}18,000/-$
6.	Extra nourishment	$\text{Rs.}10,000/-$
7.	Transportation	$\text{Rs.}1,000/-$
	Total	$\text{Rs.}4,08,000/-$

The compensation amount awarded by the learned Tribunal is hereby enhanced from $\text{Rs.}1,95,200/-$ to $\text{Rs.}4,08,000/-$. The enhanced amount will carry interest at

7.5% p.a. from the date of petition till the date of payment against both the respondents jointly and severally.

13. Accordingly the appeal is disposed of. There is no order as to costs.

Pending miscellaneous petitions, if any, in this MACMA shall stand closed.

JUSTICE PULLA KARTHIK

Date: 31.01.2023

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