



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND NINETEEN

PRSENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 614 OF 2008

Between:

1. KANUKOLLU VENKATA RAMA MOHANA RAO S/o. Sambasiva Rao
R/o. Budampadu Village,
Guntur Rural Mandal,
Guntur District.

...PETITIONER(S)

AND:

1. MUARAKONDA VENKATESWARA RAO AND ANOTHER S/o. Venkata
Ratnam
Tractor Owner, No.P. 7Q.4350
R/o. Budampadu Village,
Guntur Rural Mandal,
Guntur District.
2. United India Insurance Company Limited Rep. by its Branch Manager
Policy No.150802/31/0401009, Valid from 27/7/04 to 26/7/05
Branch Office-II,
P.B.No.2, Door No.12-25-66,
Main Road, Kothapet,

...RESPONDENTS

Counsel for the Petitioner(s): CHALLA AJAY KUMAR

Counsel for the Respondents: B DEVANAND

The Court made the following: ORDER



2019:APHC:15806

IN THE HIGH COURT OF ANDHRA PRADESH
FRIDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND NINETEEN



PRESENT

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. NO: 614 OF 2008

Appeal under Section 173 of M.V. Act, 1988 against the Order and Decree made in M.V.O.P. No. 652 of 2005 Dated: 17/10/2007 on the file of the Court of the Motor Vehicles Accidents Claims Tribunals-cum-Additional District Judge (FTC), Guntur.

Between:

Kanukollu Venkata Rama Mohana Rao, S/o. Sambasiva Rao R/o. Budampadu Village, Guntur Rural Mandal, Guntur District.

...Appellant/Petitioner

AND

1. Muarakonda Venkateswara Rao, S/o. Venkata Ratnam, R/o. Budampadu Village, Guntur Rural Mandal, Guntur District. (Owner of Tractor, No.P. 7Q.4350)
2. United India Insurance Company Limited, Rep. by its Branch Manager, Branch Office-II, P.B.No.2, Door No.12-25-66, Main Road, Kothapet, Guntur.

(Policy No.150802/31/0401009, Valid from 27/7/04 to 26/7/05)

...Respondent/Respondents

Counsel for the Appellant(s): SRI. CHALLA AJAY KUMAR

Counsel for the Respondent-1: NONE APPEARED

Counsel for the Respondent-2: SRI B. DEVANAND

The Court made the following JUDGMENT:

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO****M.A.C.M.A. No.614 OF 2008****JUDGMENT:**

1. It is a sad case vividly demonstrating how the learned Chairman, Motor Vehicle Accidents Claims Tribunal-cum-IX Additional District Judge (FTC), Guntur (for short, 'the Tribunal'), exhibited utter disdain in understanding the nature and gravity of injuries suffered by the petitioner and in evaluating consequent disability and transforming them into just and reasonable compensation.

2. Coming to factual side, on 26.04.2005 at about 07:30 p.m. while the petitioner was going towards his house near Budampadu centre on GBC Road, a tractor bearing No.AP 7Q 4350 came from Guntur side, driven by its driver at high speed and in a rash and negligent manner, dashed the petitioner and thereby the front tyre hit the petitioner and he fell down and back tyre ran over his stomach causing severe injuries. Thereby, the petitioner suffered fracture of pelvis, rupture of urinary bladder, injuries to his testicles and other parts of the body. We have the evidence of PWs.2 and 3 - doctors with regard to the nature of treatment underwent and the disability suffered by Petitioner and its impact on his life, which we will discuss a little while later. The petitioner, who is an auto driver, filed M.V.O.P. No.652 of 2005 against the respondent Nos.1 and 2, who are the owner and insurer of the tractor, and claimed a total



compensation of Rs.2,00,000/- under different heads on the plea that the accident occurred due to the fault of the tractor driver and it resulted in severe disability and impotency and also affected his earning capacity.

3. Respondent No.1 remained *ex parte*.
4. Respondent No.2 the insurance company filed counter and opposed the claim urging to put the petitioner to the strict proof of his case.
5. During trial, PWs.1 to 3 were examined and Exs.A-1 to A-6 and Ex.X-1 and X-2 were marked on behalf of petitioner. On behalf of respondent No.2, RW.1 was examined and Exs.B-1 and B-2 were marked.
6. The Tribunal awarded compensation of Rs.43,000/- with interest at the rate of 8% p.a. under the following heads:

Compensation for injuries	Rs.21,000-00
Pain and suffering	Rs. 5,000-00
Medical and incidental expenses (Extra nourishment and attendant charges)	Rs. 7,000-00
Loss of earnings and disability	Rs.10,000-00
TOTAL:	Rs.43,000/-

Hence the MACMA at the instance of petitioner.

7. While the learned counsel for insurance company advocated the sufficiency of compensation, appellant/petitioner severely fulminated



the same. In expatiation, he would argue that having regard to the fact that the petitioner suffered fracture to his pelvis, besides rupture of urinary bladder and other injuries, the Tribunal ought to have awarded Rs.25,000/- towards pain and suffering. He further argued that the Tribunal granted a woefully low amount for loss of earnings and disability. He submitted that the accident was occurred on 26.04.2005 and he was discharged from hospital on 08.06.2005 and thereafter for a considerable period he could not attend his Auto driver job and thereby lost his earnings. In that view, the Tribunal ought to have awarded a reasonable amount towards loss of past earnings. Further, he suffered 10% disability due to terminal painful restriction of both hip joint movements, which would have adverse impact on his auto driving profession. Hence, the Tribunal ought to have granted compensation for future loss of earnings also.

Then, disability is concerned, he argued the abdominal injury and rupture of urinary bladder resulted in impotency to him and deprived him of the opportunity to have children. The Tribunal has not at all considered this aspect and granted compensation. He thus prayed to enhance the compensation suitably.

8. It is a trite law that Motor Vehicles Act, 1988 being a beneficial legislation which is intended to provide just compensation to the victims of the motor vehicles accidents, needless to emphasize that it is the avowed duty of Tribunals to award just and reasonable compensation by taking into consideration all relevant factors *i.e.*, in a



death case, the age, earnings, future prospects of the deceased, the dependency, loss of consortium due to death of spouse, loss of love and affection to the nearest kith and kin *etc.*, and similarly in an injury case, the factors like the nature of injuries suffered by the victim, their gravity, pain and suffering, the resultant disability, loss of past and future earnings due to his disability, medical and other incidental expenditure *etc.*, The compensation shall be evaluated in such a manner that it should be neither a pittance nor a windfall. On the other hand, the compensation awarded should financially place the victim of the accident in such a position where he would have been had there been no accident. This is the objective of the scheme of compensation under the Act. The Apex Court in *Yadava Kumar v. The Divisional Manager, National Insurance Company Limited and another*¹, while dealing with the aspect of just compensation, held thus:

“20. The High Court and the Tribunal must realize that there is a distinction between compensation and damage. The expression compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly broader based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation.”

¹ AIR (2010) SC 3741



9. Coming to the case on hand, the evidence of PWs.2 and 3 depicts the nature of injuries, treatment underwent by the petitioner and the resultant disability occasioned to him. In fact, the Tribunal has elaborately discussed the evidence of these witnesses. PW.2 Dr.U.Surya Kumari is the Head of the Department and Professor of Urology in Government General Hospital (GGH), Guntur. She deposed that the petitioner was admitted in GGH, Guntur, on 27.04.2005 with the following injuries

- “(1) Abrasion of 6 inches x 5 inches on right side of the abdomen with Ecchymosis.
- (2) Abrasion of 4 inches x 3 inches on left side of the umbilical *i.e.*, on anterior abdominal with Ecchymosis.
- (3) Bleeding present from urethra with complainant severe pain from abdomen with shock.”

She further deposed after giving IV fluids and blood transfusion, he was advised for surgery. Scanning done before surgery showed fluid accumulation in the abdomen and haematoma present near kidney and liver. On opening abdomen, rupture of the urinary bladder was found with accumulation of one litre of blood in the abdomen. There was retro peritoneal haematoma on both sides of kidneys. The blood was drained and bladder was repaired and a catheter was arranged for passing urine. After surgery, the petitioner was shifted to ICU and treated with IV fluids and higher antibiotics. The aforesaid injuries were also associated with bony pelvis fracture. The petitioner was treated in the ward for 16 days and then shifted to



ortho ward for further management of fractures and he was discharged from GGH, Guntur, on 08.06.2005 with catheter tube inside the bladder to enable him to pass urine with an advice to change the tube for every month at O.P. The witness further stated that the petitioner was re-operated and urethroplasty was done. Most importantly, PW.2 stated that there is a possibility that the petitioner is affected with impotency due to the injuries sustained to his urinary bladder and fracture pelvis. She also stated that the petitioner required dilation for every two months and till the date of her evidence, the petitioner has been attending for follow-up treatment.

Then, PW.3, who is the Assistant Professor in GGH, Guntur, deposed that on 27.04.2005 the petitioner was admitted in GGH, Guntur, with the injures – rupture of bladder, urethra, fracture of both pubic ramie bilaterally. He was treated in the Urology department for rupture of the bladder and urethra till 13.05.2005; later, he was transferred to ortho department and given conservative treatment till 08.06.2005 and discharged. He further stated that there is a terminal painful restriction of both hip joint movements .due to which he suffered disability at 10%.

From the ocular evidence of PW.2 and Pw-3 coupled with Ext-A-3 wound certificate, Ex.A-6 - x-ray film, Ex.X-1 - case sheet of GGH, Guntur, and Ex.X-2- x-ray film, it is evident that the petitioner suffered rupture of urinary bladder and fracture pelvis which resulted in disability and impotency. Petitioner's grievance is that he married



about 7 years prior to the accident and begot two daughters of which the younger daughter died and therefore the couple wanted to have another child but due to accident, he became impotent and hence he has no chance to get another child, which causes him distress. When different medical causes for impotency are perused, the injury to pelvis, urethra, and resultant surgeries are noted as one of the causes. Therefore, the petitioner's claim that he suffered impotency due to injuries caused in the accident can be believed. In fact, the nature of injuries, the treatment underwent by the petitioner, and resultant disability *etc.*, could not be disproved by the respondents. Be that it may, the Tribunal, it must be said, committed a grave error in understanding the nature of injuries and the resultant disability and awarded a pittance to the petitioner. Hence, the intervention is essential.

10. For instance, the Tribunal awarded only Rs.5,000/- towards pain and suffering. It should be noted that due to rupture of urinary bladder and fracture of pelvis, the petitioner must have experienced excruciating pain. Therefore, he is awarded Rs.10,000/- for pain and suffering.

11. The Tribunal awarded only Rs.10,000/- towards loss of earnings and disability. This calibration is totally wrong and without any reasoning. It should be noted that as per the evidence of P.W.3, due to terminal painful restriction of both hip joint movements, the petitioner suffered 10% disability. Unfortunately, both the doctors



have not expressed the percentage of disability on account of erectile dysfunction (impotence). The Tribunal probably taking the 10% disability into account and on observing that the petitioner has not produced any reliable evidence regarding his auto driving profession, such as driving license *etc.*, to prove his earnings, granted a notional amount of Rs.10,000/- for loss of earnings and disability. Needless to emphasize this assessment is without reference to the stark facts. The petitioner was a young man of 27 years by the time of accident and his case was that he was eking out his livelihood as an auto driver. Of course he has not produced his driving license. Even otherwise, having regard to his young age and potentiality to earn, his monthly income can be fixed at Rs.3,000/-. Thus the annual income comes to Rs.36,000/-. As per the decision of the Apex Court in *Sarla Verma and others v. Delhi Transport Corporation and others*², 17 can be accepted as multiplier for the persons in the age group of 26 to 30 years. So, the total earnings of the petitioner comes to Rs.6,12,000/- (36,000/- x 17). The petitioner suffered 10% disability due to painful restriction of hip joint movements, which will have adverse impact on his earning capacity. Therefore, he is awarded compensation to that extent, which comes to Rs.61,000/-.

12. It should be further noted that the Tribunal failed to award any compensation for impotency suffered by the petitioner, which is also a sort of disability caused by the accident. His tragedy is that he got two

² 2009 (6) SCC 121



daughters of which younger daughter died and though he wanted to have another child but he could not due to impotency. Considering the disability and the mental depression that entailed, he is awarded Rs.1,00,000/-. Thus, the total compensation the petitioner deserves is as follows:

Compensation for injuries	Rs.21,000-00
Pain and suffering	Rs.10,000-00
Medical and incidental expenses (Extra nourishment and attendant charges)	Rs.7,000-00
Loss of earnings and disability	Rs.61,000-00
Compensation for impotency	Rs.1,00,000-00
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TOTAL:	Rs.1,99,000/-
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Thus, the compensation is enhanced by Rs.1,56,000/- (Rs.1,99,000 - Rs.43,000).

13. In the result, the MACMA is allowed and ordered as follows:

- 1) Compensation is enhanced by Rs.1,56,000/- with proportionate costs.
- 2) The enhanced compensation shall carry interest @ 7.5% p.a. whereas original compensation shall carry interest @ 8% p.a. from the date of filing O.P. till realization.
- 3) The respondents are directed to deposit the compensation amount within two (2) months from the



date of this order failing which execution can be taken out against them.

14. Miscellaneous petitions, if any pending, shall stand closed in consequence. No order as to costs.

**SD/- K. MURALI
ASSISTANT REGISTRAR**

(Signature)
SECTION OFFICER

//TRUE COPY//

**One Fair Copy to the Hon'ble Sri Justice U. Durga Prasad Rao)
(For his Lordships Kind Perusal)**

To

1. The Chairman, Motor Vehicles Accidents Claims Tribunals-cum-The IX Additional District Judge (FTC), Guntur, Guntur District. (Along with case records if any)
2. One CC to Sri Challa Ajay Kumar, Advocate (OPUC)
3. One CC to Sri B. Devanand, Advocate (OPUC)
4. 9 L.R. Copies.
5. The Under Secretary Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
6. The Secretary, Advocates Association (AP) Library, High Court Buildings, Amaravathi.
7. The Section Officer, Criminal Section, High Court of Andhra Pradesh, Vijayawada.
8. Two C.D. Copies.

Chp

(Signature)



HIGH COURT

2019:APHC:15806

DATED:22/03/2019

18/3/2019
DC

Rs. 16,250

JUDGMENT

MACMA.No.614 of 2008

(11)

ALLOWING THE MACMA WITHOUT COSTS

$\frac{20}{12}$ 22/6/2019