



**HIGH COURT OF ANDHRA PRADESH**  
MONDAY ,THE TWENTY SEVENTH DAY OF APRIL  
TWO THOUSAND AND TWENTY

**PRSENT**

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**  
**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1448 OF 2009**

**Between:**

1. B. HASHAM S/o.B. Masum Saheb  
Atmakur Village and Mandal  
Kurnool District

**...PETITIONER(S)**

**AND:**

1. P. MAHABOOB VALI KHAN & ANR S/o.P.Mohammed Khan  
C/o. Mahaboob Automobiles  
K.G.Road,  
Atmakur,
2. The Divisional Manager, The Oriental Insurance Company Limited  
Bhupal Complex, Kurnool

**...RESPONDENTS**

**Counsel for the Petitioner(s): C PRAKASH REDDY**

**Counsel for the Respondents: Y KISHORE BABU**

**The Court made the following: ORDER**

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO****M.A.C.M.A. No.1448 of 2009****ORDER:**

Aggrieved by the award dated 25.04.2002 in MVOP.No.22/2006 passed by the Chairman, MACT-cum- Principal District Judge, Kurnool (for short, 'Tribunal'), the claimant preferred the instant appeal.

2. The factual matrix of the case is thus:

(a) The case of the claimant is that on 21.09.2005 at about 12.00 noon while the claimant was returning home on bicycle after his masonry work and when he reached Momyn Nagar, Atmakur, and after crossing Nandyal turning road, a lorry bearing registration No.AP 21W 3550 came behind him being driven by its driver in a rash and negligent manner and dashed the claimant causing him grievous injuries. He was shifted to Government General Hospital, Kurnool for treatment where his right leg was amputated above knee. He thus suffered permanent disability. It is averred that the accident was occurred due to the fault of lorry driver. On these pleas, the claimant filed MVOP.No.22/2006 claiming compensation of ₹4,00,000/- against respondents 1 and 2 who are the owner and insurer of the offending lorry respectively.

(b) The 1<sup>st</sup> remained *ex parte*.

(c) Respondent No.2 – insurance company filed counter and opposed the claim denying the petition averments. It was contended



that accident was occurred due to the fault of the claimant himself but not the lorry driver. The driving license of the driver and insurance coverage were challenged.

(d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of the claimant and case sheet issued by the Government General Hospital, Kurnool, was exhibited as Ex.X1. The policy copy filed by the 2<sup>nd</sup> respondent was marked as Ex.B1.

(e) The tribunal considering the above evidence on record held that driver of the lorry was responsible for the accident and awarded ₹1,00,000/- as compensation with proportionate costs and interest @ 7.5% per annum against respondents 1 and 2 under different heads as follows:

Pain and suffering	₹14,000/-
Medical and Incidental expenses	₹16,000/-
Compensation for permanent physical disability	₹45,000/-
Compensation for loss of future earnings	₹25,000/-
<b>Total</b>	<u>₹1,00,000/-</u>

Hence, the appeal by the claimant challenging the quantum of compensation as low and insufficient.

3. The parities in this appeal are referred as they stood before the lower tribunal.



4. Heard arguments of learned counsel for appellant Sri C.Prakash Reddy, and Smt. B.Naga Sai Laxmi, learned counsel for 2<sup>nd</sup> respondent/insurance company.

5. Severely fulminating the award in so far as granting ₹25,000/- for the loss of future earnings, learned counsel for appellant would argue that the claimant is a mason by vocation and he was aged about 40 years and earning ₹150/- per day and due to the accident and amputation of right leg, he suffered 100% functional disability as he is now unable to attend either masonry work or any other work and therefore, the tribunal taking these facts into consideration, ought to have awarded compensation of ₹4,00,000/- as prayed but granted only a pittance of ₹25,000/- which by no means commensurate with the physical and monetary loss suffered by him. He would also contend that the compensation awarded for medical and incidental expenses and pain and suffering was too low. He thus prayed to allow the appeal and enhance compensation suitably.

6. Per contra, learned counsel for respondent/insurance company while supporting the compensation awarded by the lower tribunal, has argued that though the claimant suffered 80% disability, however, he can attend some other work in a sitting posture and earn livelihood. Therefore, taking the said aspect into consideration, the tribunal has rightly awarded ₹25,000/- for loss of future earnings, besides awarding ₹45,000/- towards physical disability and therefore, there is



no need to reconsider the compensation. Learned counsel thus prayed to dismiss the appeal.

7. In the light of the above rival arguments, the point for determination in this appeal is:

Whether the compensation awarded by the tribunal towards loss of future earnings due to permanent physical disability is just and reasonable or requires enhancement?

**8. Point:**

The facts undisputed in this case are the claimant is a mason by occupation and in the resultant accident, he suffered physical disability of 80% due to amputation of his right leg above knee. It is in this context, the compensation of ₹25,000/- for the loss of future earnings is whether just and adequate or not is the main issue in this appeal.

(a) The contention of the respondent that besides awarding compensation for loss of future earnings, the tribunal awarded compensation also for physical disability and therefore, the compensation awarded for loss of future earnings is sufficient cannot be accepted. The reason is that compensation for physical disability is different from the compensation for loss of earning power due to physical disability. A claimant who suffered physical disability deserves compensation both for loss of amenities due to physical disability and also compensation for loss of future earnings. Merely



because he is awarded compensation under the head physical disability for loss of basic amenities, that cannot be a ground to either refuse or award meagre compensation for loss of future earnings.

(b) The above aspect was considered by the Hon'ble Apex Court in ***S.Manickam v. Metropolitan Transport Corporation Limited***<sup>1</sup>. In that case, the claimant fell under a bus and the rear wheel rammmed over his right leg which resulted in amputation of his right leg below knee. He claimed ₹21,00,000/- as compensation against the Metropolitan Transport Corporation Limited. The tribunal awarded ₹9,42,822/-. Not feeling adequate, the claimant filed appeal before High Court. The Transport Corporation also preferred appeal for reduction of compensation. The High Court of Madras in its common judgment reduced compensation to ₹6,72,822/-. The High Court placed reliance on Full Bench decision of the same court in ***Cholan Roadways Corporation Limited, Kumbakonam v. Ahmad Tambi and others***<sup>2</sup>, wherein it was held that if the injured is compensated for loss of earnings and loss of earning capacity, compensation need not be awarded separately for permanent disability. Based on the said principle, learned single judge directed a reduction of ₹1,00,000/- fixed under the head 'permanent disability' from the total compensation. Aggrieved, the claimant filed appeal before the Apex Court.

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<sup>1</sup> 2013 ACJ 1935 = (2013) 12 SCC 603

<sup>2</sup> MANU/TN/9516/2006



In the above backdrop, the important question which was engaged before Apex Court was whether compensation in a motor vehicle accident case is payable to claimant for both heads viz., loss of earning capacity as well as permanent disability. The Apex Court considering its earlier judgments in *Ramesh Chandra v. Ranadheer Singh and Others*<sup>3</sup> and *B.Kothandapani v. Tamilnadu State Road Transport Corporation Limited*<sup>4</sup>, held that compensation can be payable both for loss of earning as well as disability suffered by the claimant. It is important to note that the Apex Court disagreed with the view of Madras High Court in *Cholan Roadways Corporation Limited, Kumbakonam (supra 2)*. Therefore, it is trite law that in a disability case, a claimant is entitled to compensation under the head 'loss of earnings' as well as for 'physical disability'.

(c) In the instant case, as stated supra, the tribunal awarded ₹25,000/- towards loss of future earnings. It is quiet incomprehensible as to how the lower tribunal, despite concluding that the claimant suffered 80% permanent disability due to amputation of his right leg above knee and prior to accident, he was a mason and earning ₹150/- per day, had granted a pittance of ₹25,000/- without making any objective assessment and calculation. Therefore, as rightly argued by learned counsel for petitioner, the compensation awarded under the said head need a re-visitation.

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<sup>3</sup> MANU/SC/0480/1990 = (1990) 3 SCC 723

<sup>4</sup> MANU/SC/0601/2011 = (2011) 6 SCC 420



(d) The tribunal considered the age of claimant as 48 years and his earnings at ₹150/- per day. For the said age, multiplier of 13 is provided in *Smt.Sarla Verma and others v. Delhi Transport Corporation and another*<sup>5</sup>. Therefore, compensation for loss of future earnings comes to ₹ 5,61,600/- (150x30x12x13x80%). The compensation under other heads is found to be adequate and hence, not disturbed.

(e) Thus, the total compensation payable to the claimant under different heads is detailed as below:

Pain and suffering	₹14,000/-
Medical and Incidental expenses	₹16,000/-
Compensation for permanent physical disability	₹45,000/-
Compensation for loss of future earnings	₹5,61,600/-
<b>Total</b>	<b>₹6,36,600/-</b>

Thus, the compensation is enhanced by ₹5,36,600/- (₹6,36,600/- - ₹1,00,000/-). It should be noted that in deserving cases a higher compensation than claimed can be awarded as per the decision in *Nagappa v. Gurudayal Singh and others*<sup>6</sup>.

9. In the result, this appeal is allowed and ordered as follows:

- (i) The compensation is enhanced by ₹5,36,600/- (₹6,36,600/- - ₹1,00,000/-) with proportionate costs and interest @ 7.5% p.a from the date of O.P till the date of realisation.

<sup>5</sup> 2009 ACJ 1298 = (2009) 6 SCC 121

<sup>6</sup> 2003 ACJ 12 = AIR 2003 SC 674





- (ii) The appellant/claimant shall pay additional Court fee on the enhanced compensation amount of ₹5,36,600/- within One(1) month from the date of this judgment.
- (iii) Respondents are directed to deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against them.

As a sequel, interlocutory applications, if any pending, shall stand closed. No costs.

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**U. DURGA PRASAD RAO, J**

27.04.2020  
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**Note: L.R. copy to be marked**  
(B/o)  
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