

**HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO**

**+M.A.C.M.A. No.110 of 2005**

**% Dated 31.10.2013**

Between:

# M.Narasimhulu

...Appellant

and

\$ B.Jana Reddy

and another

....Respondents

! Counsel for the Appellant : Sri A.Jayasankara  
Reddy

^ Counsel for respondent No.1 : Notice dispensed with

Counsel for respondent No.2-  
United India Insurance Company  
Limited : Sri T.Ramulu

< GIST:

>HEAD NOTE:

? Cases referred:

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1) 2001(1) ALT 495 DB

2) 1992(2) ALT 155

3) (2011) (4) ALD 804

4) 1965(1) All.E.R-563

5) 1963(2) All.E.R.432

6) 1969(1) All.E.R.555

7) 1995 ACJ 366(SC)-CA Nos.1799 & 1800 of1989 with SLP(Civil) 4586 of  
1989

8) 2013 ACJ 1403=(4)ALT 35(SC)

9) 2009 ACJ 1298  
10) (2005)6 SCC 236

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**M.A.C.M.A.No.110 OF 2005**

**JUDGMENT:**

The injured-claimant filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal–cum–IV Additional District Judge, Kurnool (*for short, 'Tribunal'*) in M.V.O.P.No.848 of 2002 dated 11.03.2004, awarding compensation of Rs.23,,232/- as against the claim of Rs.1,50,000/-(Rupees one lakh fifty thousand only), for enhancement of compensation as prayed for in the claim petition under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*).

2. Heard Sri A.Jayasankara Reddy, the learned counsel for the appellant and Sri T.Ramulu, learned standing counsel for the 2<sup>nd</sup> respondent- National Insurance Company Limited. Service of notice was dispensed with against the 1<sup>st</sup> respondent-owner of the crime vehicle. In this regard, in **M.Chakradhara Rao v. Y.Baburao** <sup>[1]</sup>, the Division Bench of this Court at paragraph No.12 held that statutory liability of the insurance company, in the absence of the owner of the crime vehicle in the appeal filed by the claimants, can be decided and maintainable as held in **New India Assurance Company Limited v. Harijana Babakka** <sup>[2]</sup> for fixing statutory liability, the presence of the owner at the appellate stage is not necessary. The same was also quoted with approval in **G.Aravind Kumar v. Md Sadat Ali** <sup>[3]</sup>. Thus, the contention that the appeal is not maintainable without impleading owner of the

vehicle as co-respondent against the insurer of the vehicle is not sustainable thereby it can be taken up for hearing. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The contentions in the grounds of appeal in nutshell are that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal erred in arriving a wrong conclusion on the quantum of compensation and awarded a very meager amount instead of awarding as claimed and prayed for from nature of the injuries proved sustained, pain and sufferance there from, treatment undergone and amount incurred for the same and hence to allow the appeal by enhancing and awarding full compensation as prayed for.

4). *Now the points that arise for consideration in the appeal are:*

1. *Whether the compensation awarded by the Tribunal is not just and requires interference by this Court while sitting in appeal against the award and if so with what enhancement to arrive a just compensation and with what rate of interest?*

2. *To what result?*

**POINT-1:**

5. The facts of the case as proved before the Tribunal and not in dispute in this appeal are that, on 23.06.2002 due to the rash and negligent driving of the driver of the crime vehicle (Tractor bearing No. AP 21 T 0726) belongs to the 1<sup>st</sup> respondent insured with the

2<sup>nd</sup> respondent covered by Ex.B.1 policy, same dashed against the tractor bearing No. AP 21 T 5356 that was being driven by the claimant by name Sri M.Narasimhulu, aged about 40 years,

resident of Kallur village and Mandal and as a result, the claimant sustained two grievous fracture injuries (as per Ex.A.3 medical certificate and Ex.A.5 discharge sheet), which occurrence is covered by Ex.A.1 First Information Report in Cr.No.74 of 2002 under Section 338 IPC, Ex.A.2 charge sheet and Ex.A.4 conviction judgment. The Tribunal from the evidence of P.W.1-claimant and P.W.2-Dr. G.Dhanunjaya with reference to Ex.P.3 and P.5 medical certificate and discharge sheet, for said bilateral colles' fracture and fracture of right radius and ulna come to the conclusion of P.W.1 got permanent disability of 10% and not 25% and by taking his earnings at Rs.1,500/- per month and applied the multiplier 10.45 arrived the amount of Rs.18,810/- and for medical expenses and treatment from Ex.A6 bills of Rs.1572/- in all awarded Rs.23,232/- against respondent Nos.1 and 2 jointly and severally.

6. It is the contention of the learned counsel for the claimant in support of the grounds of the appeal that though the permanent disability taken at 10% is not much in dispute, the compensation awarded is unjust, unreasonable and the Tribunal is erred in awarding such a meager amount though it was supposed to award just compensation by applying correct multiplier 14 and by taking consideration of the earnings at a minimum of Rs.3,000/- with increase there from of future earnings.

7. Before coming to decide, what is just compensation in the factual matrix of the case, It is apt to state that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. In **Ward v. James**<sup>[4]</sup>, it was observed by Lord Denning that award of damages in personal

injury cases is basically a conventional figure derived from experience and from awards in comparable cases. Thus, in a case involving loss of limb or its permanent inability or impairment, it is difficult to say with precise certainty as to what composition would be adequate to sufferer. The reason is that the loss of a human limb or its permanent impairment cannot be measured or converted in terms of money. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case. Upjohn LJ in **Charle red House Credit v. Tolly**<sup>[5]</sup> remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in **Parry v. Cleaver**<sup>[6]</sup> observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment though it is impossible to equate the money with the human sufferings or personal deprivations. The Apex Court in **R.D.Hattangadi v. Pest Control (India) Private Limited**<sup>[7]</sup> at paragraph No.12 held that in its very nature whatever a Tribunal or a Court is to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standard. Thus, in most

of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependent and estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required.

8. From the above legal position, coming to the factual matrix, as the fractures sustained by P.W.1 and the 10% disability of permanent nature caused there from is proved and taken note of by the Tribunal, but for the appeal claim limited to the extent not correctly taken the multiplicand and multiplier, this Court there from holds that the income of the claimant can reasonably be arrived at Rs.3,000/-p.m., with 30% increase thereon towards future prospects comes to Rs.3,900/-p.m. and by adopting multiplier 14 as laid down in the latest expression of the Apex Court in **Rajesh v. Ranabir Singh** <sup>[8]</sup> at paragraph No.11 referring to the earlier expression in **Sarla Verma v Delhi Transport Corporation** <sup>[9]</sup>.

9. Having regard to the above, the just compensation which the claimant is entitled comes to 10% of Rs.3900/- = Rs.390 per month x 12 = Rs.4680 x 14 = Rs.65,520/-, for pain and sufferance Rs.5000/-, for loss of earnings during treatment and for attendant charges and for transport charges to hospital Rs.5000/-, and for

medical expenses and treatment of Rs.4,480/- = Rs.80,000/- to award. The interest at 9% per annum awarded by the Tribunal even not in dispute, from the settled proposition of law in **TN Transport Corporation v. Raja Priya** <sup>[10]</sup>, **Sarla Verma's case** (cited supra) and from the latest expression of the Apex Court in **Rajesh's case** (cited supra), interest is awarded at 7½% per annum by modifying and reducing the rate of interest from 9% per annum awarded by the Tribunal. Accordingly, Point-1 for consideration is answered.

**POINT -2:**

10. In the result, the appeal is partly allowed by modifying the Award of the Tribunal on quantum of compensation by enhancing the same from Rs.23,232/- to Rs.80,000/- (Rupees eighty thousand only) with interest at 7½% per annum from date of the claim petition till realization/deposit with notice. The Respondent Nos.1 and 2, who are jointly and severally liable to pay the compensation, are directed to deposit within one month said amount with interest from the date of petition, failing which the claimant can execute and recover. On such deposit or execution and recovery, the claimant is permitted to withdraw the same. There is no order as to costs in the appeal.

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**Dr. B. SIVA SANKARA RAO, J**

Date: 31-10-2013

Note: L. R. copy to be marked:

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- [1] 2001(1)ALT 495 DB
- [2] 1992(2) ALT 155
- [3] (2011)(4) ALD 804
- [4] 1965(1) A11. E.R-563
- [5] 1963(2) All.E.R-432
- [6] 1969(1)A11.E.R –555
- [7] 1995 ACJ 366(SC)-CA Nos.1799 &1800 of 1989 with SLP(Civil) 4586 of 1989
- [8] 2013 ACJ 1403=(4)ALT-35(SC)
- [9] 2009 ACJ 1298.
- [10] (2005) 6 SCC 236