

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+M.A.C.M.A. No.1972 of 2005

% Dated 05.11.2013

Between:

The Oriental Insurance Company Limited

Rep. by its Branch Manager, Vijaya Complex,

Nandyal town, Kurnool District. ...Appellant

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and

\$ Mummadi Himabindu

and another

....Respondents

! Counsel for the Appellant : Sri I. Maamu Vani

^ Counsel for respondent No.1 : Sri V.Nitish

Counsel for respondent No.2- : None appeared

< GIST:

>HEAD NOTE:

? Cases referred:

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

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

3) 1969(1) All.E.R.555

4) 1995 ACJ 366(SC)-CA Nos.1799 & 1800 of1989 with SLP(Civil) 4586 of 1989

5) 2013 (4)ALT 35(SC)

6) (2005)6 SCC 236

7) 2009 ACJ 1298

8) 2013(4) ALT 35 (SC)

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.1972 OF 2005

JUDGMENT:

The Oriental Insurance Company Limited-claimant filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal–cum-I Additional District Judge, Cuddaph,(*for short, 'Tribunal'*) in M.V.O.P.No.823 of 2002 dated 05.10.2004, awarding compensation of Rs.2,69,800/- (Rupees two lakhs sixty nine thousand and eight hundred only) as against the claim of the 1st respondent of Rs.3,00,000/-(Rupees three lakh only), in the claim petition under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*).

2. Heard Sri I. Maamu Vani, the learned standing counsel for the appellant and Sri V.Nitish learned counsel for the 1st respondent. The 2nd respondent who was served with notice is called absent with no representation and thus taken as heard the 2nd respondent for the absence to decide on merits and perused the record. 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 was erred in arriving wrong conclusion on the huge quantum of compensation awarded by not going through the facts properly with regard to the things like negligence on the part of the claimant in crossing the road without taking proper care and caution, not properly going through the medical certificate which shows actually only one grievous injury to left wrist and left shoulder but considered false claim of insertion of steel plates into left thigh, even by considering the disability certificate which actually did not support the version of the claimant that she was treated

for the fracture of her left thigh and the injuries mentioned by her were not tallying with the injuries mentioned in the wound certificate and even not properly considered the age of the claimant. Hence to allow the appeal.

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

1. Whether the compensation awarded by the Tribunal is highly abnormal and requires interference by this Court while sitting in appeal against the award and if so what amount 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 29.06.2002 due to the rash and negligent driving of the driver of the crime vehicle (Car bearing No. AP 21 W 9) belongs to the 1st respondent insured with the 2nd respondent, hit the claimant by Kum. M.Himabindu, d/o Nagasubba Reddy, aged 20 years, claimed as milk vendor by avocation while she was standing at the auto soon after getting down from it, as a result she sustained fractures to left collar bone, left wrist, left thigh and left leg below the knee (as per Exs.A.2 and A.6 medical certificates), which occurrence is covered by Ex.A.1 First Information Report in Cr.No.41 of 2002 under Section 337 IPC. and Ex.A.2 charge sheet. As per the evidence of the claimant- P.W.1, she spent Rs.15,820/-(Rupees fifteen thousand eight hundred and twenty only) for treatment and filed Ex.A.5 bunch of bills for Rs.15,820/-(Rupees fifteen thousand eight hundred and twenty only). However, the learned Chairman of the Tribunal, having found said injuries sustained by the P.W.1 described in Ex.A.2 and A.6 as grievous in nature, awarded in all compensation of Rs.2,69,800/-(Rupees two lakh sixty nine thousand eight hundred only) out of Rs.3,00,000/- against the appellant and 2nd respondent herein jointly and severally.

6. It is the contention of the learned counsel for the appellant in support of the grounds of the appeal that the compensation awarded is unjust, unreasonable and the Tribunal is erred in awarding such a huge amount though it was supposed to award just compensation by taking consideration of the nature of injuries referred in Exs.A.2 and A.6 properly, the Tribunal ought not to have considered the false evidence of the claimant and the doctors, ought to have seen the claimant involving in the accident due to her negligence and ought not to have considered the disability certificate and to dismiss the claim.

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**^[1], 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**^[2] remarked that the

assessment of damages has never been an exact science and it is essentially practical. Lord Morris in **Parry v. Cleaver**^[3] 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 monetary 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**^[4] 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 and coming to the factual matrix, as per the paragraph No.13 at page No.5 of the award of the Tribunal, there is swelling deformity left wrist 10cm x 5 cm skin deep, abrasion dorsum left wrist, 2) deformity swelling on left shoulder, collar bone movement painful over left shoulder, 3) pain and tenderness swelling above chest ache, 4) left eye black eye, 5) left forehead 10cm x 3cm abrasion skin deep and 6) left knee dorsum skin deep, abrasion

5cm x 3cm out of which the injury Nos. 1 to 3 described as grievous and other three are simple. As per the evidence of P.W.2 doctor J.Nagesh, there is mal-union of the fracture of the left wrist and complaint of pain during working with left hand and the disability assessed at 50%. The other doctor P.W.3, who examined P.W.1, deposed that he examined P.W.1 on 02.08.2001 and found that he is suffering from incomplete closures of left Palpebral Aperture due to cicatricial band on the medial side of the left upper lid, as stated by him in Ex.A.2 medical certificate that can be rectified by plastic surgery by spending Rs.20,000/- and that the disability can be taken of permanent nature at 40%. Even as rightly contended by the appellant/insurance company, there is no material to say the disability suffering by the injured is 40% as deposed P.W.3 takes to take much less 50% as deposed by the P.W.2 who is admittedly the doctor that treated initially the injured and even the injured did not choose to go before the medical board to obtain any disability certificate to take into consideration.

9. On perusal, the item 3 (Part II) of Schedule I of the Workmen's Compensation Act, 1923 speaks as:

"Amputation from (20.32cms.) from tip of acromion to less than (11.43 cms.) below tip of olecranon"

Even amputation from 11.43 cm below tip of olecranon is 60% thereby the disability from the so called mal union of the left wrist, at best, can be taken 20% of permanent nature and nothing more from the so called functional restrictions of the left wrist causing pain in working. There from, the injured is either as tailor or milk vendor for the claim of earning at Rs.4500/- per month she could not produce any record. Thus, even as on the date of accident on 29.06.2002 any wage earner or housewife domestic contribution. The earnings can be taken at Rs.3000/- per month and as per the latest expression in **Rajesh v.**

Ranabir Singh [5] even for the private employees and daily earners escalation of future earning capacity has to be taken into consideration and the injured since 20 years, the future earning capacity comes to 50% and thereby it comes to Rs.4500/- x 20 x Rs.900/- per month x 12 = Rs.10,800/- per annum and the multiple admissible from the age of the injured is 18, then it comes to Rs.1,94,400/- and for the medical expenses and treatment from Ex.A.5 bills Rs.17,000/- as rightly taken by the Tribunal it comes to Rs.2,11,400/- + other 3 simple injuries Rs.2000/- each comes to Rs.6000/- + other grievous injury of Rs.5000/- i.e. at left shoulder and for the injury to the eye from P.w.3 evidence it requires plastic surgery to the eye lid to cure that costs Rs.25000/- even taken including for the injury and the costs of plastic surgery together it comes to Rs.2,47,400/- and transport and attendant charges of Rs.3000/- total comes to Rs.2,50,000/- is just and reasonable to award.

10. Coming to the rate of interest, though 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** [6] and **Sarla Varma v. Delhi Transport Corporation** [7] and from the latest expression of the Apex Court in **Rajesh v. Ranabir Singh** [8], interest is awarded at 7½% per annum by modifying and reducing from 9% per annum awarded by the Tribunal. Accordingly, Point-1 for consideration is answered.

POINT -2:

11. In the result, the appeal is partly allowed by reducing the quantum of compensation from Rs.2,69,800/-(Rupees two lakh sixty nine thousand eight hundred only) to Rs.2,50,000/-(Rupees fifteen thousand only) with interest at 7½% per annum instead of 9% per annum from the date of petition (MVOP) till realization/deposit with

notice. Rest of the terms of the award of the Tribunal holds good.
There is no order as to costs in the appeal.

Dr. B. SIVA SANKARA RAO, J

Date: 05-11-2013

Note: L.R. copy to be marked.

B/o
VVR

[1] 1965(1) A11. E.R-563

[2] 1963(2) All.E.R-432

[3] 1969(1)A11.E.R –555

[4] 1995 ACJ 366(SC)-CA Nos.1799 &1800 of 1989 with SLP(Civil) 4586 of 1989

[5] 2013(4)ALT 35(SC)

[6] (2005) 6 SCC 236

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