

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+M.A.C.M.A. No.264 of 2005

% Dated 29.10.2013

Between:

Shaik Salam

...Appellant

and

\$ Y.Srinivasa Rao

and another

....Respondents

! Counsel for the Appellant : Sri N.Subba Rao

^ Counsel for respondent No.1 : None appeared

Counsel for respondent No.2-
The New India Assurance Company
Limited : Sri Ravi Shankar
Jandhyala

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>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) (2005) 6 SCC 236

6) 2009 ACJ 1298

7) 2013(4) ALT 35(SC)

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.264 OF 2005

JUDGMENT:

The injured-claimant filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Vehicles Claims Tribunal–cum-XI Additional District Judge, Guntur,(*for short, 'Tribunal'*) in M.V.O.P.No.1139 of 2002 dated 30.07.2004, awarding compensation of Rs.11,700/-(Rupees Eleven thousand seven hundred only) as against the claim of Rs.1,00,000/-(Rupees one lakh 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 N.Subba Rao, the learned counsel for the appellant and Sri Ravi Shankar Jandhyala, learned standing counsel for the 2nd respondent-New India Assurance Company Limited. The 1st respondent who was served with notice is called absent with no representation and thus taken as heard the 1st respondent for his 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 a wrong conclusion on the quantum of compensation and awarded a very meager amount instead of awarding as claimed and prayed for from the nature of the injuries proved sustained and pain and sufferance there from and 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 03.05.2002 due to the rash and negligent driving of the driver of the crime vehicle (Lorry bearing No. AP-16-U-5579) belongs to the 1st respondent insured with the 2nd respondent covered by policy, and the insurer is liable, though the vehicle at the time of accident was committed theft and driving away by thief, that dashed against the claimant by name Sri Shaik Saleem, aged 42 years, resident of Munipalli, Ponnur Mandal, Guntur district, Mason maistry by avocation while he was proceeding on his bicycle along with his son of 2 years old, as a result he sustained grievous injuries viz., injury to his head with fracture to the skull (as per Ex.A.3 medical certificate), which occurrence is covered by Ex.A.1 First Information Report in Cr.No.38 of 2002 under Section 337 IPC. and Ex.A.2 charge sheet. As per the claimant- P.W.1's evidence coupled with Ex.A.3 medical certificate, he sustained injury to head and seeks compensation of Rs.1,00,000/-. However, the learned Chairman of the Tribunal, having found the injuries sustained by P.W.1 and described in Ex.A.3 and for loss of earnings during treatment, simply awarded in all compensation of Rs.11,700/-(Rupees eleven thousand seven hundred) 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 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 taking consideration of the nature of injuries referred in Ex.A.3 and proved by the evidence of P.W.1 with reference to it and from medical expenses, from nature of injuries, its pain and sufferance, loss of

earnings and for the treatment required, though not believed any permanent disability to apply multiplier method of structured formula .

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 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**^[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, coming to the factual matrix, what the Tribunal taking into consideration of four injuries sustained by the claimant as per Ex.A.3 medical certificate and also loss earnings during period of treatment, awarded of Rs.11,700/- as compensation is low and unjust. On perusal of the record and as per the Ex.A.3 wound certificate, the claimant-appellant sustained injuries viz., vertical abrasion extending from left ear to middle of the head measuring 10cm x 4cm, abrasion of 2cm x 2cm over the left side of the face, an abrasion of 5cm x 5cm over left shoulder and black incise injury of 6cm x 4cm x 4cm over the right ingunal region and a radiologist report with x-ray report taken for these injuries etc., show no any bony injuries sustained by the claimant. Ex.A.6 is the medical bills for Rs.700/-(Rupees seven hundred only). Ex.A.5 is the scanning report and Ex.A.4 O.P. chit which no more improve the case of the claimant than what is described in Ex.A.3 of the injuries sustained by the claimant, and treatment undergone.

9. Having regard to the above and by taking into consideration of the nature of the injuries and its severity, mental shock, pain and sufferance, one supposed to put up from the occurrence as these are not simple abrasions though not grievous injuries and particularly from the length of the fourth injury which is a lacerated one, a compensation of Rs.5000/-(Five thousand only) for each of the first three injuries and Rs.7000/-(Rupees seven thousand only) for the fourth injury of Rs.3,000/- for medical expenses and treatment in all Rs.25,000/- (Rupees twenty five thousand only) can be awarded as just compensation by enhancing the claim from Rs.11,700/-(Rupees eleven thousand and seven thousand only) awarded by the Tribunal. Coming to the point 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** ^[5], **Sarla Verma v. Delhi Transport Corporation** ^[6] and from the latest expression of the Apex Court in **Rajesh v. Ranabir Singh** ^[7], 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:

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.11,700/-(Eleven thousand and seven hundred only) to Rs.25,000/-(Rupees twenty five thousand only) with interest at 7½% per annum from the date of petition (MVOP) till realization/deposit with notice. Respondent Nos.1 and 2, who are jointly and severally liable to pay the compensation, are directed to deposit said amount with interest within one month from today, 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.

Dr. B. SIVA SANKARA RAO, J

Date: 29-10-2013

VVR

Note: L.R. Copy to be marked:

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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

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