

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

**+M.A.C.M.A. No.454 of 2005**

**% Dated 31.10.2013**

Between:

# Muvvala Vasudeva .....Appellant

and

\$ Pattela Rama Koteswara Rao

and another

.....Respondents

! Counsel for the Appellant : Sri M. Rajendra Babu

^ Counsel for respondent No.1 : dismissed for default

Counsel for respondent No.2-  
The Oriental Insurance Company : None appeared  
Limited

< 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 ACJ 1403=(4) ALT-35(SC)
- 6) 2009 ACJ 1298
- 7) (2005)6 SCC 236
- 8) 2009 ACJ 1298
- 9) 2013(4)ALT 35(SC)

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

**M.A.C.M.A.NO.454 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–VIII Additional District Judge, Guntur (*for short, 'Tribunal'*) in M.V.O.P.No.421 of 2005 dated 14.10.2004, awarding compensation of Rs.52,500/-(Rupees fifty two thousand five 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 A.Rajendra Babu, the learned counsel for the appellant the appeal against the 1<sup>st</sup> respondent is dismissed for default vide orders dated 02.01.2012 and respondent No.2-Oriental Insurance Company Limited served but called absent with no representation. Taken as heard the 2<sup>nd</sup> 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 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 01.01.1995 due to the rash and negligent driving of the driver of the crime vehicle (Lorry bearing No. AP-13T-1467) belongs to the 1<sup>st</sup> respondent, same dashed against the stationed lorry at Burilanka village within the limits of Kadiyam police station of East Godavari district, as a result, the claimant by name Muvvala Vasudeva @ Vasu, aged about 26 years, resident of 30<sup>th</sup> line, Nallachruvu Village Guntur district, cleaner of the said lorry, fell down from the cabin and sustained fracture injury on right femur and lacerated injury to the head ¼” x ¼” x ½” at left forehead above eyebrow (as per Ex.A.4 medical certificate and Ex.A.5 OP Chits), which occurrence is covered by Ex.A.1 First Information Report in Cr.No.1 of 1995 under Section 338 IPC, the Tribunal, from the evidence of P.W.1-claimant and P.W.2-Dr. P.Narasimham with reference to Ex.P.3 and P.5 medical certificate and OP chits, for said fracture injury on right femur and lacerated injury to the head, comes to the conclusion of P.W.1 got partial permanent disability of 30% and by taking his earnings at Rs.15,000/- per annum arrived the amount of Rs.46,500/- and for medical expenses Rs.6000/- in all awarded Rs.52,500/- against respondent Nos.1 and 2 jointly.

6. It is the contention of the learned counsel for the claimant in support of the grounds of the appeal that the Tribunal ought to have taken 100% disability in stead of 30%, 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 and by taking consideration of the earnings at a minimum of Rs.3,000/- with increase there from of future earnings.

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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>[1]</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 compensation 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>[2]</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>[3]</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 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**<sup>[4]</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, what the Tribunal taking into consideration of the fractures sustained by P.W.1 and the disability of permanent nature caused there from is proved from mal-union of the fracture resulting shortening of the lower limb with mild limitations of right hip movement and taken note of by the Tribunal, but for not specified as 30%, have to assess from P.W.2 evidence also and from the avocation of the claimant as lorry cleaner, just to arrive at 20% permanent disability, the appeal claim there from can be 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.1800/-p.m., at the time of accident dated 01.01.1995 and by adopting multiplier 18 as laid down in the latest expression of the Apex Court in **Rajesh v. Ranabir Singh**<sup>[5]</sup> at paragraph No.11 referring to the earlier expression in **Sarla Verma v**

## **Delhi Transport Corporation** <sup>[6]</sup> .

9. Thus from the above, it establishes the disability suffered by the claimant is of permanent nature though not the material to believe the 30% disability, it can be taken of 20% disability of permanent nature there from, from the age of the injured 23 years, the multiplier that is applicable is 18 and the income of the injured taken at the time of the accident in 1995 at Rs.1800/- per month and 20% there from comes to Rs.360/- per month x 12 = Rs.4,320/- per month x 18 = Rs.77,760/- with proportionate increase in the prospective earnings that can be taken at 30% comes to Rs.23,328/- = Rs.1,01,088/- and for medical expenses and treatment of Rs.6,000/-, for pain and sufferance, for loss of earnings during treatment, for attendant charges and for transport charges to hospital of Rs.3912/- = Rs.1,11,000/-, confined to appeal claim of Rs.1,00,000/-. The interest at 9% per annum awarded by the Tribunal even not in dispute, from the settled proposition of law **TN Transport Corporation v. Raja Priya** <sup>[7]</sup>, **Sarla Verma v. Delhi Transport Corporation** <sup>[8]</sup> and from the latest expression of the Apex Court in **Rajesh v. Ranabir Singh** <sup>[9]</sup>, 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.52,500/- to Rs.1,00,000/- (Rupees one lakh only) with interest at 7½% per annum from date of the claim petition till realization/deposit with notice. Respondent No. 2, which is liable to pay the compensation indemnifying the respondent No.1, is 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.

B/o  
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[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 ACJ 1403=(4)ALT-35(SC)

[6] 2009 ACJ 1298.

[7] (2005) 6 SCC 236

[8] 2009 ACJ 1298

[9] 2013(4)ALT 35(SC)