

IN THE HIGH COURT FOR THE STATE OF TELANGANA,  
HYDERABAD

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**M.A.C.M.A.No.443 OF 2020**  
**AND**  
**CROSS OBJECTIONS No.17 of 2022**

**M.A.C.M.A.No.443 OF 2020**

Between:

The Oriental Insurance Co.Ltd. rep. by its B.M.,Khammam

..Appellant/R-3

VERSUS

Ramisetty Srinivas Rao and others

...Respondents

**CROSS OBJECTIONS No.17 of 2022**

Between:

Ramisetty Srinivasa Rao

..Cross objector/claimant

VERSUS

P.Sanjeeva Rao and others

...Respondents

**ORDER PRONOUNCED ON: 15.02.2024**

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**

**AND**

**THE HON'BLE SRI JUSTICE N. TUKARAMJI**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? : Yes

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**N. TUKARAMJI, J**

**\* THE HON'BLE SRI JUSTICE P.SAM KOSHY**  
**AND**  
**THE HON'BLE SRI JUSTICE N. TUKARAMJI**  
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! Counsel for Appellant/R-3 : Ms. I. Maamu Vani

^Counsel for the respondent/petitioner : Mr.K.Jagathpal Reddy

<GIST:

> HEAD NOTE:

? Cases referred

**HONOURABLE SRI JUSTICE P. SAM KOSHY  
AND  
HONOURABLE SRI JUSTICE N. TUKARAMJI**

**M.A.C.M.A.No.443 OF 2020  
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**COMMON JUDGMENT:** (per Hon'ble Sri Justice N. Tukaramji)

This appeal has been preferred by the respondent No.3/insurer disputing the liability and quantum of compensation and the respondent No.1/petitioner has filed cross objections seeking enhancement of compensation against the decree and order dated 02.12.2019 in M.V.O.P.No.560 of 2015 passed by the Motor Accidents Claims Tribunal-cum-Special Sessions Judge for Fast Tracking the case relating to Atrocities against women-cum-VIII Additional District Judge, Khammam.

2. For the sake of facility, the parties are hereinafter referred to with their rank before the tribunal.
3. The petitioner's case in brief is that, on 22.10.2014 when himself along with his wife and two other employees were travelling in a Maruti Swift Car bearing registration

No.AP-20AM-3636 (for short, 'the car') and on the way the driver drove the car in rash and negligent manner and dashed a road side tree resulting in severe injuries all over his body. Thus claiming physical disability and loss of earnings and earning capacity filed petition seeking compensation of Rs.1,75,00,000/-.

4. The tribunal on considering the materials on record granted compensation of Rs.1,25,10,500/- with proportionate costs and interest at 6% per annum from the date of the petition till realization.

5. We have heard Ms. I. Mamuvani, learned counsel for the appellant/respondent No.3/insurer and Mr. K. Jagathpal Reddy, learned counsel for the respondent No.1/petitioner.

6. In appeal the learned counsel for the respondent No.3/insurer would contend that the petitioner is the husband of registered owner of the car. According to the petitioner, his income is only source for the family including his wife. This asserted fact is clarifying that the car was purchased by the petitioner in the name of his wife and even employed the driver.

In such situation the petitioner squarely stands in the footing of owner and would be vicariously liable for the acts done by his employee/driver of the car. Further, the petitioner had paid certain amount of compensation to the other injured of the car and this fact is substantiating that the petitioner is the *de facto* owner of the car. Hence, the petitioner cannot claim compensation as third party or as an occupant of the car. That apart, even according to the petitioner at relevant time they were proceeding to attend a business and this statement itself is establishing that the vehicle was used for commercial purpose, in violation of the policy condition. Therefore, the respondent No.3/insurer shall be exonerated and at the best the liability shall be limited to Rs.2 lakhs to the extent of owner's risk as per the insurance contract.

7. On the other hand contested that, the doctor/PW-10, Member of Medical Board, who issued Ex.A-12/disability certificate is showing 70% of temporary disability, whereas another doctor of the Medical Board/PW-12 after about four years had rated the disability as permanent and at 75%, this

variation on its own is explaining the fallacy. Further the income tax returns filed by the petitioner are indicating clear rise in income defying the claim of disability effecting the occupational abilities and earnings, hence assessment of occupational disability at 55% is erroneous. That apart, the tribunal ought not have granted huge amounts towards loss of earnings during treatment and the other non pecuniary heads. Thus prayed for reconsideration and to allow the appeal.

8. In cross-objections and in reply the petitioner pleaded that though the liability of the respondents has been appropriately confirmed, tribunal had erred in properly considering the materials placed on record in appreciating his income and should have taken the gross earnings as income. Further contended that, though the permanent physical disability was certified by the doctors at 75%, restricting the same at 55% is unreasonable. In addition explained that the income in the tax returns/Exs:A-14 to A-17, especially of the year 2015-16 is reflecting the receipts of earlier transactions. After everything, due to the disability he could not run the establishment. Therefore pleaded that the

occupational disability shall be considered at 100%. In addition implored for granting compensation for loss of amenities and marital sufferings. Hence, prayed for reconsideration and for enhancement of the compensation.

9. In support of the pleadings, the learned counsel for the petitioner cited authorities in (i) Raj Kumar v. Ajay Kumar and another – 2011 ACJ 1, (ii) Charan Singh v. Vittal Reddy and another – 2003 (4) ALD 183, (iii) A. Prakash v. Claims Manager, IFFCO-TOKIO General Insurance Company Limited and others – 2023 ACJ 593, (iv) Lakshmana Gowda B.N. v. Oriental Insurance Co.Ltd. and another – 2023 ACJ 1481, (v) Jithendran v. New India Assurance Co. Ltd. and another – 2022 (1) ALD 235 (SC), (vi) Ramesh v. Karan Singh and another – 2022 ACJ 2658, (vii) Dixit Kumar and another v. Om Prakash Goel – (2017) 15 Supreme Court Cases 546, (viii) Nakka Ram Babu v. O. Akka Rao and another – 2015 (4) ALD 50, (ix) Jakir Hussein v. Sabir and others – 2015 (3) ALD 115 (SC) and (x) Rajan v. Soly Sebastian and another – 2015 ACJ 2418 and pleaded that the disability estimated by the qualified doctor is only guiding factor and by

considering the petitioner's physical condition and by distinguishing the loss of earning capacity to that of physical disability, the disability of the petitioner should be considered at 100% .

10. In these rival claims, the issues arise for determination are:

*(a) Whether the respondent No.3/insurer has made out tenable ground to absolve its liability?*

*(b) Whether the tribunal had awarded just compensation to the petitioner in the given facts and circumstances of the case?*

**POINT (a):**

11. The factum of accident and the injuries suffered by the petitioner are not in dispute. The evidence of claimant/PW-1 and the statements of doctors/Pws.2, 3, 5, 10 and 12 are confirming the treatment undergone by the claimant.

12. The contest of the insurer is in two fold, firstly, the petitioner is the *de facto* owner of the car hence he shall not be considered as third party. To validate this plea, the respondent



No.3/insurer has pointed to the statement of petitioner as PW-1 that he is only the income earning member and all his family members are dependants. Therefore pleaded for deducing the fact that the petitioner's wife has no income and the petitioner would have purchased the car and employed the driver.

13. Upon consideration, this theory appears to be far fetched and an abstract pitch as the PW-1's statement cannot be a conclusive proof to accept the facts propounded by the respondent No.3/insurer. Admittedly, the wife of the petitioner/respondent No.2 is *de jure* owner of the car and the respondent No.3/insurer issued insurance policy in her name covering the risk of the passengers. In this factual position, the claim of respondent No.3/insurer to consider the petitioner as owner appears to be speculative and proposed only to somehow absolve its liability. Further it is settled position that the term, third party implies to any person other than insurer and the insured, who are not parties to the insurance contract. That being so, merely the insured of the car being the wife of the petitioner,

and taking one plea that he is only the bread winner, treating him as owner of the car would be preposterous and unjustified.

14. Secondly, the contention that the car was used for commercial purpose as admittedly the petitioner along with the others were proceeding in the car to attend a business. Equating use of vehicle for commercial purpose, when the passengers travelling in that vehicle for their business, is *ex facie* irrational and beyond logic. Therefore, no reasonableness is found in the aspects urged by the respondent No.3/insurer.

15. Admittedly the insurance contract/Ex.B-1 is comprehensive package policy. A perusal of Schedule of the policy is demonstrating that the respondent No.3/insurer had collected Rs.500/- as premium for the unnamed passengers. The petitioner was travelling in the car as passenger. As a result, his risk is covered under the insurance policy. Thus the liability of the insurer/respondent No.3 to indemnify the insured under the insurance contract, as concluded by the tribunal deserves to be and is accordingly affirmed.

**POINT (b):**

16. In regard to the disability of the petitioner, the doctors deposed about his injuries, treatment and the physical disability. As rightly pointed by the respondent No.3/insurer that the disability certificate issued by the doctors/PWs.10 and 12 had opined the nature of the disability as temporary and permanent with a variation of 5 percent. However the treating doctor/PW-2 categorically deposed that the petitioner needs permanent support for walking throughout his life and he would not be able to run, walk fast, squat and requires physiotherapy all along for his walking ability. This evidence of the doctors is making out that the petitioner would be suffering disability all the time and even after four years, rating the disability as permanent and higher than earlier is explicating that the physical disability of the petitioner is indeed worsened. Nonetheless, it is well settled that while assessing the compensation, the effect of disability on the income earning capacity of the injured has to be considered. The evidence of doctor and assessment of disability by the medical board gives an insight as to the physical disability of the injured

and the Court by juxtaposing the occupation with the disability would evaluate its probable effect on the earnings of the petitioner. The evidence of treating doctor is that the petitioner is suffering physical discomfort in certain physical movements and mobility, as such, the claim of the petitioner that the disability rated by the doctor has effected total earning capacity is unacceptable. At the same time, the contention of the respondent No.3/insurer that in view of discrepancy in rating the physical disability by the doctors of the Medical Board, and the disclaimer that the certificate is not valid for medico legal cases, shall not be a ground to disregard it in measuring the effect of physical disability in the avocation. In this view, the tribunal had assessed the petitioner's probable loss in the occupational capabilities at 55%. Having regard to the medical evidence placed and the occupation pleaded, we find no error in exercising the jurisdiction by the tribunal on this aspect.

17. In regard to earnings of the petitioner, the tribunal had taken the average of gross income by deducting the average income and the tax paid shown in the income tax returns placed

on record and arrived at Rs.8,27,759/- as annual income besides, future prospects were also added. As this approach is reasonable, no reason is found to interfere with this conclusion. In effect, the compensation granted for loss of earnings due to permanent disability at Rs.73,98,105/- stands approved.

18. Having regard to the medial evidence, treatment, bills placed on record and the future medical expenditure stated by the treating doctor, the amounts granted by the Tribunal under the heads of medical expenditure at Rs.22,76,718/-, the future medical expenses at Rs.3,00,000/-, loss of earnings during the period of treatment at Rs.19,31,440/-, transportation expenses at Rs.1,16,000/-, Rs.3,00,000/- for pain and suffering, Rs.20,000/- for extra nourishment and Rs.1,68,000/- towards attendant charges and by rounding of awarding the amounts at Rs.1,25,10,500/- are found reasonable, thus these amounts are affirmed.

19. In addition, considering the probable effect of physical disability in enjoyment of life, comforts and convenience, we are inclined to grant Rs.2,00,000/- for loss of amenities.

20. For the aforesaid, the awarded compensation in the impugned order stands modified to Rs.1,27,10,500/- (Rupees One Crore twenty seven lakhs ten thousand and five hundred only) with interest at 6% per annum from the date of the petition till realization. The respondent No.3/insurer is directed to deposit the awarded compensation by setting of the amounts already paid/deposited, within 4 (four) weeks from the date of receipt of a copy of this judgment. On such deposit the petitioner is permitted to withdraw entire awarded amounts.

21. Resultantly, M.A.C.M.A.No.443 of 2020 filed by the insurer/respondent No.3 is dismissed without costs and Cross Objections No.17 of 2022 filed by the petitioner is partly allowed with proportionate costs.

As a sequel, pending miscellaneous petitions if any, stands closed.

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**P. SAM KOSHY, J**

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**N.TUKARAMJI, J**

**Date:15.02.2024**  
**ccm**