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**(2014) 06 AP CK 0073**  
**In the Andhra Pradesh High Court**  
**Case No : MACMA No. 3109 of 2009**

B. Srinivas Chary

APPELLANT

Vs

Tara Enterprises

RESPONDENT

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**Date of Decision :** 02-06-2014

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 163A, 166

**Citation :** (2014) 06 AP CK 0073

**Hon'ble Judges :** U. Durga Prasad Rao, J

**Bench :** Single Bench

**Advocate :** P. Ramakrishna Reddy, Advocate for the Appellant; Harinath Reddy Soma and R. Venkat Rao, Advocate for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

U. Durga Prasad Rao, J.—This M.A.C.M.A. is filed by the claimants challenging the award dated 01.03.2005 in O.P. No. 485 of 2002 passed by M.A.C.T-cum-XIV Additional Chief Judge, City Civil Court, at Hyderabad (for short the Tribunal).

2. The factual matrix of the case is thus:

a) The original version of the claimant in his claim petition was that on 25.01.2002 when himself along with one Yadaiah was proceeding on his Hero Honda Motor Cycle bearing No. AP 10 5382 and reached Hafeezpet Railway Gate, at Miyapur, Hyderabad, a lorry bearing No. AP 28 U 2349 came in the opposite direction being driven by its driver in a rash and negligent manner dashed the motor cycle and caused the accident. Thereby, the claimant suffered fracture to both bones of his left leg and head besides other injuries all over the body. He took treatment in Apollo Hospital. Hyderabad where operation was conducted and rods were inserted. He suffered disability and consequent loss of earning power. It is averred that the accident was occurred due to the fault of lorry driver. On these pleas, the claimant filed O.P. No. 485 of 2002 against respondents 1 and 2, who are the owner and insurer of the offending vehicle and

claimed Rs. 2,00,000/- as compensation under different heads mentioned in the OP

b) It may be noted that pending O.P., the claimant filed I.A. No. 787 of 2004 and got amended his plea relating to manner of accident to the effect that the offending container lorry came not in the opposite direction but from the rear side of the motor cycle and dashed it and caused the accident.

c) It may be noted that the claimant filed I.A. No. 784 of 2004 and made enhanced the claim of Rs. 7,00,000/- in the place of Rs. 2,00,000/-.

d) While so, respondent No. 1 remained ex parte.

e) Respondent No. 2 traversed all the material averments in the claim petition and urged to put the claimant in strict proof. It denied the method and manner of occurrence of accident as pleaded by the claimant. R.2 contended that the claim is highly excessive and untenable and prayed to dismiss the OP.

f) During trial, P.Ws. 1 and 2 were examined and Exs. A1 to A22 were marked on behalf of the claimant. Policy copy filed by 2nd respondent was marked as Ex. B.1.

g) A perusal of the award would show that the Tribunal considering the evidence has observed that the claimant gave up earlier version and took a new version and that he has not filed charge sheet and he failed to prove the fault of the lorry driver and police also referred the case stating that there was negligence on the part of the petitioner himself. On these observations, the Tribunal held that the claimant is not entitled to compensation u/s 166 of the Motor Vehicle Act (for short "M.V. Act") and on the other hand, he will be entitled to compensation u/s 163A of M.V. Act only.

h) Issue No. 2 relating to quantum of compensation is concerned, the Tribunal awarded compensation of Rs. 3,62,000/- with costs and interest at 9% per annum under different heads as follows:

Hence the appeal by the claimant on the ground of inadequacy of compensation.

3. Heard arguments of Sri P. Ramakrishna Reddy, learned counsel for appellant/claimant, Sri. S. Harinath Reddy, learned counsel for 1st respondent and Sri R. Venkata Rao, learned counsel for 2nd respondent/Insurance Company.

4 a Challenging the award, learned counsel for appellant firstly argued that the Tribunal erred in holding that the claimant failed to prove the fault of the offending lorry and committed mistake in treating the claim as one u/s 163A of M.V. Act instead of Section 166 of M.V. Act. Expatiating it, learned counsel argued that in the FIR which was lodged within short time after the accident, the version of the claimant was that when he reached Hafeeznagar railway gate he overtook the crime lorry (container) bearing No. AP 28 U 2349 and noticed that another lorry was coming in the opposite direction with a load of bamboos and as it was being driven by its driver at high speed, apprehending danger the claimant

stopped his motor cycle and stationed it. In the meanwhile, the lorry (container) came behind him being driven by its driver in a rash and negligent manner and hit him and thereby he sustained fracture to the left leg and injuries to other parts of the body. Learned counsel further submitted that while submitting the claim petition his counsel by mistake pleaded as if lorry bearing No. AP 28 U 2349 (crime vehicle) came in the opposite direction being driven in a rash and negligent manner by its driver and dashed him. This pleading was obviously wrong and so after realizing the mistake, the claimant filed I.A. No. 787 of 2004 and got amended his pleadings to the effect that the lorry (container) bearing No. AP 28 U 2349 (crime lorry) came on the rear side of the motor cycle and dashed his stationed motor cycle and caused the accident. Learned counsel further submitted that in his evidence he clearly deposed this aspect by stating that when he reached Hafeezpet Railway gate he stopped the motor cycle and at that time the lorry (container) bearing No. AP 28 U 2349 came from his rear side and over took him on left side and dashed him and thus caused the accident.

b) Learned counsel submitted that there is no deviation regarding manner of occurrence of accident in the FIR, in the pleadings and in the evidence, except the slight mistake in the initial pleadings which was rectified by amendment. However, the Tribunal held that the claimant gave up his earlier version in the petition prior to the amendment and further he did not file the charge sheet to prove the fault of the lorry driver. Learned counsel argued that when the claimant in corroboration of his earlier version deposed in same manner in his evidence and when the owner and insurer of the offending vehicle did not adduce any contra evidence to disprove his version, the Tribunal ought to have believed his version and held that lorry driver was at fault. Instead the Tribunal erroneously held as if the claimant failed to prove the fault of lorry driver and converted the claim petition from Section 166 of M.V. Act to Section 163A of M.V. Act and thereby compensation was drastically reduced. He relied upon the following decisions on the point that when there is no rebuttal evidence from the owner and insurer, the claimant's version can be accepted:

- 1) Zareen Bega Vs. New India Assurance Co. Ltd. and Others,
- 2) Karri Nagapadma Sridevi and Another Vs. Oriental Fire and General Insurance Co. Ltd., Kakinada and Others,

5. Nextly, regarding quantum of compensation, he argued that due to erroneous conversion of claim petition to Section 163A of M.V. Act, compensation was reduced drastically. He submitted that though he produced Ex. A8--medical bills worth Rs. 2,80,000/- and odd, the Tribunal granted only Rs. 15,000/- as per the second schedule of the Act. Similarly, the Tribunal has not granted any compensation for loss of amenities, physiotherapy charges, attendant charges etc., though the claimant produced Exs. A9 and A10 bills. He thus, prayed that just and reasonable compensation may be awarded by allowing the appeal. He relied upon the following decisions regarding the principles of assessment of compensation:

1) K. Narasimha Murthy Vs. The Manager, Oriental Insurance Company Limited and Another,

2) R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others,

6 a) Per contra, while supporting the award, learned counsel for respondent No. 2/Insurance Company firstly argued that the Tribunal has rightly observed that the claimant not only deviated from his version in FIR and took a new plea and further, he failed to prove the fault of the lorry driver and accordingly converted the claim into a no fault liability claim u/s 163A of M.V. Act and computed the compensation and there is no need to review the same.

b) Secondly, he argued that medical bills are concerned, the claimant has not examined the doctor who treated him and prescribed the medicines. Therefore, even if the claim is treated as one u/s 166 of M.V. Act still there is no proper proof for medical expenditure. He thus prayed to dismiss the appeal.

7. In the light of above rival arguments, the point for determination in this appeal is:

Whether the award passed by the Tribunal is legally and factually sustainable?

8. POINT: Upon perusing the pleadings and evidence on record, I am of the considered view that the Tribunal erred in holding claimant failed to establish the guilt of the lorry driver and consequently converting the claim as one u/s 163A of M.V. Act. Admittedly, the accident was occurred on 25.01.2002 and within short time after the accident the statement of the claimant was recorded by the police in Apollo Hospital, Hyderabad. His earliest version regarding the manner of occurrence of accident was that when he reached Hafeezpet railway gate on his motor cycle along with one Yadagiri, he over took the offending lorry (container) bearing No. AP 28 U 2439 and found that another lorry was coming in the opposite direction with bamboo load and on the apprehension that it may hit him, the claimant stopped his vehicle and in the meanwhile the lorry (container) over took him from his left side and in that process hit his left leg and thus caused the accident. Of course, in the claim petition, at first he pleaded as if the lorry (container) came in the opposite direction and dashed him. However, he filed I.A. No. 787 of 2004 and got amended his plea and stated that the lorry (container) came from his rear side and dashed his stationed motor cycle.

9. Then coming to the evidence, he deposed in tune with his amended pleadings. So in essence, there is no much difference between the pleadings and evidence except the slight mistake in the initial pleadings. Be that as it may, at the outset, his version is that the lorry (container) came from his backside and hit him and caused the accident. In the cross examination he denied the suggestion that the lorry did not dash him. Except this suggestion nothing specific was extracted to disbelieve his testimony. The respondents have not adduced any contra evidence by examining the driver of the lorry (container) to prove his innocence. Therefore, the available evidence on record clearly established the fault of lorry

driver. In the cited decision in Zareen Bega's case (1 supra), it was held that when there is no contra evidence from the owner and insurer of the offending vehicle to rebut the evidence of claim, the same can be believed. The Tribunal on a wrong appreciation of facts and evidence held as if the claimant deviated from his earlier version and he failed to prove the fault of lorry driver by filing charge sheet and ultimately converted the petition into one u/s 163A of M.V. Act. Hence the said finding of the Tribunal is set aside. While holding that the lorry (container) driver was at fault, the claim petition is treated as one u/s 166 of M.V. Act.

10. Now coming to quantum of compensation, the Tribunal granted only Rs. 15,000/- towards medical expenditure. The claimant produced discharge summaries and medical bills issued by Apollo Hospital, Hyderabad and other medical shops. According to him, he spent about Rs. 2,80,000/-. However, he did not examine the doctor who treated him in the Apollo Hospital and prescribed the medicines. Therefore, there is no proper evidence regarding medical expenditure. However, the discharge summaries would show that the claimant suffered segmental fracture of left tibia and fibula and ORIF (Open Reduction and Internal Fixation) was done in Apollo Hospital. Therefore, having regard to the grievous nature of fracture injuries and treatment in corporate hospital, the claimant is awarded Rs. 1,00,000/- towards medical expenditure. He is also awarded Rs. 5,000/- towards attendant charges and Rs. 10,000/- towards physiotherapy charges. Considering the fracture injuries, the compensation for pain and suffering is enhanced to Rs. 10,000/-. The compensation awarded under other heads is found reasonable. Thus the total compensation payable to the claimant under different heads can be detailed as follows:

So, the compensation is enhanced by Rs. 1,05,000/- (Rs. 4,67,000/- minus Rs. 3,62,000/-).

11. In the result, this MACMA is partly allowed and ordered as follows:

a) The compensation is enhanced by Rs. 1,05,000/- with proportionate costs. The enhanced compensation amount shall carry interest at the rate of 7.5% p.a. from the date of O.P. till the date of realization.

b) The respondents are directed to deposit the compensation amount within one month from the date of this judgment, failing which execution can be taken out against them.

c) No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.