(2014) 10 AP CK 0077

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 447 of 2009

Kurugondla Rama Krishna APPELLANT

Vs

Sakineni Krishna Rao RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Citation : (2014) 10 AP CK 0077

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

Bench : Single Bench

Advocate : M.P. Chandramouli, Advocate for the Appellant; T.K. Sreedhar, Advocate for the Respondent

Judgement

U. Durga Prasad Rao, J.—Aggrieved by the Award dated 16.10.2006 in MVOP No. 378 of 2001 passed by the Chairman, M.A.C.T.-cum-I Additional District Judge, Guntur (for short the Tribunal), the claimant preferred the instant MACMA.

2. a) On factual side, on 28.01.2000, when the claimant was returning from Shiridi on TATA SUMO bearing No. AP 9 AG 5678, on the way the driver drove the vehicle in a rash and negligent manner and lost control over the vehicle and thereby it turned turtle. In the resultant accident, the claimant sustained crush injury to his right leg and fracture to his lower jaw besides other injuries. Immediately he was taken to NIMS Hospital, Hyderabad where his right leg was amputated and he also took treatment in JEST Hospital, Chennai where implantation of five artificial moles was done to his lower jaw. He purchased artificial leg from M/s. Endolite India Limited and incurred heavy medical expenditure. It is pleaded that accident was occurred due to the fault of driver of van. On these pleas he filed M.V.O.P. No. 378 of 2001 against respondents 1 and 2, who are the owner and insurer of the offending van and claimed Rs. 25,00,000/- as compensation.

3. a) Respondents 1 and 2 filed counter and denied all the material averments made in the claim petition and urged to put the claimant in strict proof of the

same. They contended that there was no rashness or negligence on the part of driver of the van. They also contended that the claim is highly excessive and untenable.

b) During trial PWs.1 to 3 were examined and Exs. A1 to A18 were marked on behalf of claimant. RW1 was examined and Ex. B1 policy was marked on behalf of R2.

c) The Tribunal on appreciation of evidence, has awarded a sum of Rs. 2,33,000/- with costs and interest at 7.5% p.a. under different heads as follows:

Hence, the appeal by claimant.

4. The parties in the appeal are referred as they stood before the Tribunal.

5. Heard Sri M.P. Chandramouli, learned counsel for appellant/claimant.

Though notice to first respondent/owner was served but there is no representation for him. Though 2nd respondent/Insurance Company is represented by advocate there was no representation.

6. Learned counsel for appellant mainly contended that though cogent oral and documentary evidence was placed before the Tribunal to the effect that claimant incurred huge expenditure of Rs. 2 lakhs for purchase of prosthesis, Tribunal awarded only a paltry sum of Rs. 50,000/- which is quite unjust. He further argued that on account of business activities the claimant has to move different places and in view of his disability he needs the constant services of a driver and an attender but the Tribunal has not awarded any amount in that regard. He thus prayed to allow the appeal and enhance the compensation.

7. In the light of above arguments, the point for determination is:

Whether the compensation awarded by the Tribunal is just and reasonable or needs enhancement?

8. a) POINT: Sofar as the first argument of the appellant is concerned, on perusal of record I find some force in it. The evidence of PW1 coupled with evidence of PW2 and Ex. A13 receipt issued by Endolite India Limited would show that the right leg of the claimant above knee was surgically amputated in the NIMS Hospital, Hyderabad and thereafter the claimant purchased an artificial limb from M/s. Endolite India Limited, Chennai by incurring an expenditure of Rs. 2 lakhs and odd. The Tribunal no doubt believed the said accident and purchase of artificial limb but awarded only Rs. 50,000/-. In my considered view, the said award is not adequate. When the victim of an accident unfortunately gets amputated his limb and secures an artificial limb, he deserves just and reasonable compensation for acquiring the same. Tort-feasors owner and insurer of the crime vehicle cannot contend for a moment that amount spent on artificial limb is not a part of medical expenditure. In the instant case, in the cross-examination of PW1 it was suggested that acquiring artificial limb is not a part of treatment and hence the claimant is not entitled to any amount in that regard. In

my view that is not correct.

b) In the case of Nagappa vs. Gurudayal Singh the right foot of a poor agriculturist was amputated in the accident occurred on 06.02.1985. The Tribunal has not awarded any compensation for acquiring limb but High Court of Karnataka awarded Rs. 18,000/-. The Honourable Apex Court not only approved this but also awarded additional compensation to enable the claimant to change the artificial leg for every two or three years. Coming to the instant case, having regard to the financial soundness of claimant as he is owning fleet of trucks and doing transport business at different places, in my view, he need not be awarded future medical expenditure. However, he deserved the full amount that he already spent for acquiring artificial leg. No deduction in this regard will justify. Therefore, compensation for purchasing artificial leg is enhanced from Rs. 50,000/- to Rs. 2,00,000/-. As a consequence, compensation awarded by the Tribunal is enhanced by Rs. 1,50,000/- (Rs. 3,83,000/- minus Rs. 2,33,000/-).

c) Sofar as claimants submission that he needs services of driver and attender is concerned, the expenditure incurred on them cannot be said to be directly proximate to the accident. The claimant for his business tours may require vehicle and driver even if he was not involved in the accident. Similarly, by using artificial limb, more sophisticated than Jaipur leg, claimant cannot claim to be totally dependant on attender for his pursuits though he may need attender for more comfort.

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

a) Compensation is enhanced by Rs. 1,50,000/- with proportionate costs and simple interest @ 7.5% per annum from the date of OP till the date of realization against respondents.

b) Insurance Company (2nd respondent in OP) shall pay the compensation amount to the claimant at first and recover the same from the 1st respondent/ owner. Pending appeal if the Insurance Company has paid any compensation, it can recover the same from the owner/R1 in OP but not from the claimant.

c) Insurance Company shall deposit the compensation within two months from the date of this judgment, failing which execution can be taken out against it.

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