

**THE HON'BLE SRI JUSTICE B. CHANDRA KUMAR**

**M.A.C.M.A. No. 3157 of 2005**

**Judgment:**

Aggrieved by the award dated 10.08.2005 passed in MVOP No.619 of 2003 by the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Cuddapah (FTC), Cuddapah, whereby and whereunder the Tribunal awarded compensation of Rs.83,000/-, with interest at 7.5% p.a., from the date of petition till realization, out of the claim of Rs.2,00,000/- the claimant filed the present appeal seeking enhancement of compensation.

The parties hereinafter will be referred to as they are arrayed before the Tribunal for the sake of convenience.

The brief facts of the case are as follows. That on 20.08.2000 the claimant along with his relative was proceeding on TVS-50. When they were near Pochamreddipalli at about 3.30 PM it is alleged that the driver of the jeep bearing No.AP-04-5885 coming from opposite direction drove the jeep in a rash and negligent manner and dashed against the TVS moped. As a result of which the claimant sustained fractures and other injuries. He was shifted to Government Hospital, Proddatur, from there he was shifted to Ruya Hospital, Tirupati. Subsequently he has taken treatment from Balaji Institute of Surgery, Research and Rehabilitation for Disabled (BIRRD), TTD, Tirupati. The case of the claimant is that due to the accident both his hands become useless and he has lost his total earning capacity.

The first respondent-owner of the vehicle remained *ex parte*. The second respondent-Insurance Company contested the matter on various grounds.

The Tribunal framed necessary issues.

On behalf of the claimant, the claimant himself was examined as PW.1 and Dr. G. Venkata Subbaiah was examined as PW.2 and Exs.A1 to A7 were marked. None were examined on behalf of the respondents and no documents were marked.

On the issue of negligence the Tribunal came to the conclusion that the accident occurred due to negligence of the jeep driver. This finding is not in dispute. On issue No.2 the Tribunal awarded total compensation of Rs.83,000/-.

The main contention of the learned counsel for the claimant is that in case of disability the Tribunal ought to have applied the multiplier method. It is also her contention that no amounts have been awarded towards disfigurement, attendant charges and transport charges. It is also her submission that the movements of both the wrists are restricted and thus the claimant sustained permanent disability and he cannot work as previously. It is also her submission that the Doctor who treated the claimant need not be examined. It is also her submission that any doctor who is competent can issue disability certificate. In support of her contention she has relied on a

decision reported in **Syed Saleem v. Abdul Shukur**<sup>[1]</sup>.

Learned counsel for the Insurance Company submitted that the Tribunal has awarded reasonable compensation and there is nothing to add to the amount already awarded. It is also his submission that the Doctor who treated the claimant is not examined and that the claimant has not obtained any medical certificate from the medical board. It is also his submission that there is no loss of earnings in this case.

Since the quantum is in dispute, we have to consider the evidence on record with regard to nature of injuries and disability sustained by the claimant. According to PW.1 the injured claimant, he

sustained contusion over the wrist joint of the right fore arm with restricted movements and deformity. It is also his submission that he has also sustained injury over the left fore arm resulting in restriction of the movements and deformity. He sustained other two simple injuries over the right shoulder and medial aspect of the right clavicle. According to him, he had taken treatment from Ruya Hospital, Tirupati. His case is that he had spent Rs.30,000/- towards medical expenses and Rs.10,000/- towards transport charges. His main grievance is that he cannot bend his wrist and cannot hold the objects and he is still experiencing pain and his hands became useless. It is also his case that he was aged about 26 years and earning Rs.20,000/- per month by doing business in groundnut.

PW.2 is the Orthopedic Surgeon who examined the claimant on 30.06.2005. According to PW.2, PW.1 sustained disability as wrist joint movements of both the hands i.e., right and left wrist joints are partially restricted. According to PW.2 the claimant will have difficulty to do any work. He will have the difficulty in grasping the things and lifting any article. According to PW.2, he has verified the medical records and x-rays and the permanent disability is 35%. It is elicited in his cross-examination that he had not treated the claimant previously. Ex.A1 is the copy of FIR. Ex.A2 is the wound certificate issued by the Civil Assistant Surgeon, Government Hospital, Proddatur. Ex.A6 X-ray revealed comminuted fracture of distal end of radius. The fracture of distal end and radius of right wrist was also noticed. Fractures were found at both the wrists. Ex.A4 is the disability certificate issued by PW.2. The other medical record reveals that the claimant was admitted in the hospital on 21.08.2000 and discharged on 25.08.2000. Certain medical bills have been filed. Prescription card was also filed. So, in the light of the above referred evidence it is clear that the

claimant sustained fractures to both the wrists and sustained permanent disability. In the light of **Syed Saleem's** case (1 supra) it appears that the doctor who treated alone need not issue disability certificate. Any competent doctor after going through the medical records and x-rays can issue disability certificate. Of course, it is always better to secure disability certificate from the competent medical board. In the circumstances, I hold that the claimant sustained 35% functional disability and loss of earnings.

It is settled law that the multiplier method has to be adopted for calculating loss of earnings. According to the claimant, he was earning Rs.20,000/- per month. Admittedly, no documents have been filed in support of his case. He was aged about 28 years at the time of giving evidence. In the circumstances, I consider it just and reasonable to take the income of the claimant at Rs.3,000/- per month and having regard to the future prospects his income is fixed at Rs.4500/-. 35% of the same would come to Rs.1575/- per month and Rs.18,900/- per annum. If the same is multiplied with '17' the total loss of earning would come to Rs.3,21,300/-. The claimant also would be entitled to Rs.10,000/- towards pain and suffering, Rs.20,000/- towards medical expenses, Rs.5,000/- towards transportation charges and other miscellaneous expenses, Rs.5,000/- towards loss of expectation of life, Rs.5,000/- towards loss of amenities of life and Rs.5,000/- towards attendant charges and other miscellaneous expenses. This, in all, the claimant is entitled to total compensation of Rs.3,71,300/-.

It is settled law the irrespective of claim made by the claimants, the Tribunals and the Courts have to award just and reasonable compensation. However, the claimants have to pay deficit court fee.

Accordingly, the MACMA is allowed awarding total

compensation of Rs.3,71,300/- to the claimant. The Tribunal awarded interest at 7.5% p.a., from the date of petition till realization, and there is no need to disturb the same. However, the claimant is directed to pay deficit court fee before drafting the decree. In the circumstances, no costs.

As a sequel, the miscellaneous, if any, pending in this appeal shall stand closed.

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**B. CHANDRA KUMAR, J.**

Date: 28.08.2014

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[1] 2007 (1) ALT 648