HONOURABLE SRI JUSTICE M. GANGA RAO

MACMA.No.1118 of 2008

JUDGMENT:

The appellant is claimant, filed this appeal against the award and decree dated 19.12.2007 passed in M.V.O.P.No.920 of 2005 by the Motor Vehicles Accidents Claims Tribunal (IV Addl. District Judge) Guntur, granting compensation of Rs.25,000/- with proportionate costs and interest at the rate of 7.5% per annum for the injuries sustained by the appellant in the motor accident that occurred on 01.08.2005.

2. Heard the learned counsel for the appellant. Inspite of receipt of notice, the second respondent Insurance Company has not entered its appearance.

3. The appellant is the owner cum cleaner of the lorry bearing No.AP 16-T-6389 and he was on duty. While he was repairing the lorry on the road side margin near Kanamarlapudi main road, Vinukonda, the lorry bearing No. AHH 3195 was driven by its driver in rash and negligent manner with high speed, dashed the appellant's stationed lorry bearing No.AP 16-T-6389 and ran over the appellant's leg. Due to the accident, the appellant sustained severe injuries and was admitted in the Government Hospital, Vinukonda. Later he was shifted to Government General Hospital, Guntur for treatment. The case in Cr.No.41 of 2005 was registered by Savalyapuram Police Station against the driver of the offending vehicle. The police stated that the appellant is the owner cum cleaner of the lorry and he used to get Rs.5,000/- per month. Because of the injuries sustained in the accident he suffered mental agony, due to injury he sustained partial

permanent disability and he could not attend his duties. Hence he claims compensation of Rs.1,00,000/- under Sec. 163-A of M.V.Act against the respondents.

4. The first respondent was set exparte and the second respondent Insurance Company filed written statement denying the averments of the claim petition and specifically pleaded that the claim is excessive and driver of the first respondent has no valid driving licence hence the liability could not be fastened on the Insurance Company.

5. The Tribunal based on the pleadings framed the following issues for its consideration:

1. *Whether the accident occurred due to rash and negligent driving of the drivers of the lorry bearing No. AHH-3195?*
2. *To what compensation the petitioner is entitled and from whom?*
3. *To what relief?*

6. During the trial, in support of his claim, the appellant examined PWs.1 and 2 and got marked Exs.A1 to A4. Ex.X-1 got marked through PW.2. On behalf of the second respondent no oral or documentary evidence was adduced.

7. The Tribunal, considering the evidence of PW.1 and coupled with the documents Ex.A1 certified copy of FIR, Ex.A2 certified copy of charge sheet, came to the conclusion that due to the rash and negligent driving of the offending vehicle lorry bearing No. AHH 3195 by its driver the accident was occurred. In the accident, the appellant sustained injury. The Tribunal considering the evidence of PW.1 and PW.2 Doctor who treated the appellant deposed that he worked as an Assistant Professor, Orthopedic in Government General Hospital,

Guntur. On 07.08.2005 the appellant was admitted the Hospital and was discharged on 29.08.2005. The appellant was admitted with crush injury and with fracture to his third toe left side and avulsion injury of the sole of left fore foot, and lacerated soft tissue injury dorsum of the left foot and gangrenous fourth toe of left foot and he was treated with antibiotics, analgesis, repeated dressings and amputation of left fourth toe was done on 27.08.2005. PW.2 further states that the appellant is having contractures of all the toes of left foot with loss of fourth toe left side and disability is 25% which is partial and permanent and Ex.X1 is the case sheet and the appellant came to the Hospital twice after discharge as per Ex.A4 to follow up treatment. In the cross-examination of PW.2 nothing is elicited to disprove his evidence. The Tribunal based on the evidence of PW.2 and Ex.X1 and Exs.A3 and A4 came to conclusion that the appellant was admitted in Government Hospital, Vinukonda and later he took treatment in the Government General Hospital, Guntur. The appellant sustained with fracture on fourth toe of left leg was amputated and appellant not filed disability certificate to show that the appellant suffered 20% partial and permanent disability. A perusal of Ex.X1 and evidence of PW.2 established that the appellant was given treatment in the Hospital. The fact remains that the appellant sustained a fracture injury and one toe is removed and he was in hospital for 21 days. Due to the injuries the appellant must have experienced severe pain and suffering and entitled for compensation of Rs.20,000/- under head pain and suffering. The Tribunal further held that the appellant was admitted in the Government General Hospital and he was given free treatment and medicines that apart he purchased medicines. Even after, he was discharged from the

hospital he was on medication. Therefore Rs.2,000/- was awarded towards medical expenses. Rs.2,000/- towards loss of income for the hospitalization period of 21 days and Rs.1,000/- towards extra nourishment and other incidental charges incurred by him. The total compensation of Rs.25,000/- with proportionate costs and interest at the rate of 7.5% was granted from the date of petition till the date of realization. The Tribunal fastened the liability of payment of compensation on the appellant holding that he is the owner of the offending lorry bearing No. AHH 3195 and second respondent is insurer. The appellant filed this appeal mainly contended that the Tribunal has granted meager compensation of Rs. 25,000/- against the claim of Rs.1,00,000/-. The Tribunal having held that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle bearing No. AHH 3195 erroneously held that the appellant is the owner of the offending lorry and second respondent is the insurer and fastened the liability. The Tribunal also awarded Rs.2,000/- towards loss of earning for the period of hospitalization from 08.07.2005 to 29.08.2005. He was under follow up treatment for the injuries. He suffered partial permanent disability of 20% and he could not able to attend the duties. The Tribunal granted meager amounts of Rs.2,000/- towards medical expenses and Rs.1,000/- towards extra nourishment. However the learned counsel for the appellant contended that the Tribunal ought to have granted the compensation claimed by the appellant Rs.1,00,000/-. As the appellant sustained crush injury to the left foot and with fractures to his third toe left side and the injury of the sole of left fore foot, and lacerated soft tissue injury dorsum of the left foot and gangrenous

fourth toe of left foot and his left toe was amputated. Thereby he suffered partial permanent disability of 25%.

8. The Tribunal having held that the accident occurred due to the rash and negligence driving of the driver of the offending vehicle, as such, the claim could have been allowed under Section 166 of Motor Vehicles Act, to grant just and fair compensation.

9. In the facts and circumstances of the case and having perused the material on record and the contention of the learned counsel for the appellant, this Court finds that the Tribunal has rightly held that the accident was occurred due to rash and negligent driving of the driver of the offending lorry bearing No. AHH 3195.

10. In view of the said finding the Tribunal ought to have fixed the liability of payment of compensation on the insurer of the offending vehicle lorry bearing No. AHH 3195 but the Tribunal committed grave error in holding that the appellant is the owner of the offending vehicle lorry bearing No. AHH 3195 and second respondent is the insurer and jointly liable to pay the compensation to the appellant whereas the appellant is the owner cum cleaner of the lorry bearing No. AP-16-T-6389 and he sustained crush injuries in the accident. As per the evidence of PW.2 he underwent operation for his crush injury to the left foot and left fore toe was amputated. In the evidence of PW.2 specifically stated that the appellant sustained 25% disability and thereby he suffered partial permanent disability of 25%. There is no justifiable reason to the Tribunal to disbelieve the earnings of the appellant as Rs.5,000/- per month but it could reasonable be taken as Rs.2,500/- per month and he suffered partial permanent disability of

25% as per the evidence of PW.2/Doctor. The partial permanent disability could be taken as 25% as stated by PW.2/Doctor, thus the annual loss of income of the appellant could be arrived at Rs.30,000/- (Rs.2,500/-X12) and he is aged about 45 years, the multiplier 14 is applied to arrive the loss of income and 25% of total loss of income could be granted as compensation arrived at Rs.1,05,000/- (Rs.4,20,000/-X25%) whereas the Tribunal granted meager compensation of Rs.25,000/- under various heads along with proportionate costs and interest @ 7.5% per annum.

11. In view of the above discussion, this Court felt it just and reasonable to grant total compensation of Rs.1,00,000/- to the appellant as claimed with proportionate costs and interest at the rate of 7.5 % per annum from the date of petition till realization of amount and jointly payable by the owner of the offending lorry and insurer. The grant of interest @ 7.5% could not be said to be on highside as the Tribunal granted interest based on the prevailing bank interest rates as per the provisions of Section 171 M.V.Act. Accordingly, the MACMA is allowed.

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

JUSTICE M. GANGA RAO

Dated 7th February, 2019.
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M.A.C.M.A.No.1118 of 2008

7th February, 2019.

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