

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

FRIDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY THREE

PRESENT



THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

MACMA NO: 1791 OF 2012

Between:

Brahmaiah @ Brahmaiah Achari, S/o.Pedda Ramaswamy, Hindu Carpenter
R/o.Koneru Village, alampur Mandal, Mahabubnagar District.

...APPELLANT

AND

1. Mahindra And Mahindra Ltd Automotive Division Owner of Tempo Chas Lorry Bearing No.AP 23 TC 749 O/o.Near Bidar 'T' Junction, Zaheerabad, Medak District.
2. M/s.United India Insurance Company Ltd, rep by its Divisional Manager [Police no.021700/31/04/00836 Mumbai Branch, valid from 01.12.2004 to 30.11.2005]

[R1 remained exparte in the court below, hence no notice its necessary on this appeal] O/o.Kurnool.

...RESPONDENTS

Appeal is filed under Section 173 of M.V. Act being Aggrieved by the said. order in O.P.No:959/2005 Dated: 25-4-2007 on the file of the Hon'ble VI Addl. District & sessions Judge-cum-Motor Accident Claim Tribunal, Kurnool District.

Counsel for the Appellant :SRI. J JANAKIRAMI REDDY

Counsel for the Respondent No 1 :SRI. M VENKATA RAMANA REDDY

Counsel for the Respondent No 2 : M/s A. JAYANTHI

The Court made the following:

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HON'BLE SRI JUSTICE V. GOPALA KRISHNA RAO

MACMA.No.1791 OF 2012

JUDGMENT:

1. The appellant is the claimant in M.V.O.P.No.959 of 2005 on the file of Motor Accident Claims Tribunal – cum – VI Additional District Judge, Kurnool and the respondents are the respondents in the said case.
2. Both the parties in the appeal will be referred to as they are arrayed in the main case.
3. The case of the claimant is as follows:

On 27.07.2005, the claimant and one Prasad Reddy were going on a motor cycle bearing No.AP-22-C-9298 from Kurnool in order to go to their native place Koneru, by the time they reached near Mahindra Tractor show room, one Tempo chasis lorry bearing No.AP-23-TC-749 came in a rash and negligent manner and dashed to the motorcycle, due to which the claimant fell down and sustained fracture injury on his right leg and multiple injuries all over the body and immediately, the claimant was shifted to Government General Hospital, Kurnool, at where, his right leg was amputated and due to the disability, the claimant suffered a loss and that the claimant claimed compensation of Rs.2,50,000/-.

4. The respondent No.1 did not choose to file any counter before the Tribunal.

5. The respondent No.2-Insurance company filed a counter by denying the averments in the petition and that the claimant is not entitled to any compensation from the insurance company.
6. Based on the material on record, the learned tribunal framed the following issues:
 - I. Whether the accident dated 27.07.2005 has occurred due to collision between motor cycle bearing No.AP-22-C09298 and Tempo Chas lorry bearing No.AP-23-TC-749?
 - II. Whether the accident has occurred due to rash and negligent driving of the Tempo Chas lorry bearing No.AP-23-TC-749 by its driver?
 - III. Whether the petitioner is entitled to any compensation, from which of the respondent and if so to what extent?
 - IV. To what relief?
7. During the course of enquiry, on behalf of the claimant, PWs.1 and 2 are examined and got marked Ex.A1 to Ex.A8 and Ex.X1-case sheet before the Tribunal. On behalf of the respondents, no evidence is adduced and policy copy is marked as Ex.B1.
8. Basing on the material record, the learned Tribunal awarded the compensation of Rs.1,32,500/- with interest @ 7.5% per annum from the date of filing of the petition till the date of realization.
9. Aggrieved against the said order, the claimant filed the present appeal.
10. Now the point for consideration is:
Whether the Order of Tribunal needs any interference?

POINT:

11. The evidence of PW.1 clearly goes to show that due to rash and negligent driving of the driver of the tempo chasis lorry bearing No.AP-23-TC-749 (hereinafter be referred to as 'the offending vehicle'), the accident occurred. Ex.A1-certified copy of F.I.R and Ex.A2-certified copy of charge sheet, clearly supports the case of claimant. The evidence of PW.1 coupled with Ex.A1 and Ex.A2 clearly goes to show that the driver of the offending vehicle came in a rash and negligent manner and dashed the two wheeler of the claimant, due to that he fell down and received fracture injuries and subsequently, his leg was also amputated. Therefore, due to rash and negligent driving of driver of the offending vehicle, the accident is occurred. The tribunal also gave the same finding. Therefore, there was no need to interfere with the finding given by the leaned Tribunal.
12. The evidence on record clearly goes to show that the offending vehicle is insured with the respondent No.2-Insurance company and the policy is also on force and Ex.B1 supports the same. It is not the case of the respondent No.2-Insurance company that there are violations in the Ex.B1-policy.
13. The material on record clearly goes to show that the claimant sustained fracture injuries in a road accident and his right leg was also amputated. Basing on the injuries sustained by the claimant,

even though the 100% disability was given in a disability certificate which is supported by PW.2, the learned Tribunal on considering the entire material on record has fixed the percentage of disability at 50% and the learned Tribunal fixed the annual income of the claimant at Rs.15,000/-. Here, the accident is occurred on 27.07.2005. No doubt, no positive evidence is produced by the claimant to show the exact quantum income of the claimant, but in those days, an ordinary coolie can easily earn Rs.3,000/- per month. Therefore, the monthly income of the claimant is fixed at Rs.3,000/- and the annual income comes to Rs.36,000/-. The multiplier '11' is applied by the Tribunal by considering the age of the claimant as '55' years. Therefore, $\text{Rs.36,000/-} \times 11 \times 50\% = \text{Rs.1,98,000/-}$ is awarded towards disability i.e., loss of future earnings.

14. On considering the entire material on record, the learned Tribunal has granted Rs.20,000/- towards pain and suffering, Rs.25,000/- towards medical expenses and this Court views that there is no need to interfere with the said finding given by the Tribunal. The learned Tribunal has granted Rs.5,000/- only towards the attendant charges, considering the nature of injuries and treatment undergone by the claimant, this court views that the same is enhanced to Rs.7,000/-. Therefore, in total, the claimant is entitled an amount of Rs.2,50,000/- towards total

compensation. Therefore, the claimant is entitled the compensation of Rs.2,50,000/- from both the respondents.

15. In the result, the appeal is allowed, by enhancing the compensation of Rs.1,32,500/- to Rs.2,50,000/- and the claimant is entitled the interest at 7.5% per annum on the enhanced compensation. Both the respondents No.1 and 2 are directed to deposit the enhanced compensation with interest at 7.5% per annum from the date of petition till the date of Judgment within two months. There shall be no order as to costs.

16. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

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SD/- B. CHITTI JOSEPH
ASSISTANT REGISTRAR

for SECTION OFFICER

To,

1. The VI Addl. District & sessions Judge-cum-Motor Accident Claim Tribunal, Kurnool District.
2. One CC to SRI. J JANAKIRAMI REDDY Advocate [OPUC]
3. One CC to SRI. M VENKATA RAMANA REDDY Advocate [OPUC]
4. One CC to M/S A.JAYANTHI Advocate [OPUC]
5. Two CD Copies

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HIGH COURT

DATED:31/03/2023

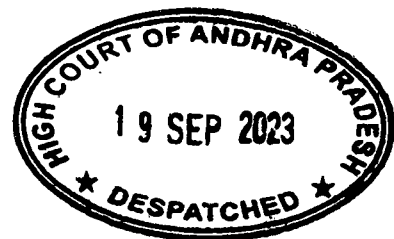
**JUDGMENT + DECREE
MACMA.No.1791 of 2012**

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19/8/2023

ALLOWING THE MACMA



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**FRIDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY THREE**



PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

MACMA NO: 1791 OF 2012

Between:

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R/o.Koneru Village, alampur Mandal, Mahabubnagar District.**

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AND

- 1. Mahindra And Mahindra Ltd Automotive Division Owner of Tempo Chas Lorry
Bearing No.AP 23 TC 749 O/o.Near Bidar 'T' Junction, Zaheerabad, Medak
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order in O.P.No:959/2005 Dated: 25-4-2007 on the file of the Hon'ble VI Addl.
District & sessions Judge-cum-Motor Accident Claim Tribunal, Kurnool District.**

**This appeal coming on for hearing and upon perusing the grounds of appeal, the
judgment and decree of the Tribunal and the material papers in the appeal and
upon hearing the arguments of SRI. J. JANAKIRAMI REDDY for the appellant and
of SRI. M. VENKATA RAMANA REDDY Advocate for Respondent No. 1 & M/S
A.JAYANTHI Advocates for the Respondent No. 2**

This Court Doth order and decree as follows:

- 1. That the appeal be and the same is hereby is allowed,**
- 2. That The compensation of Rs. 1,32,500/- is hereby enhanced to Rs.2,50,000/-
and the claimant is entitled to the interest at 7.5% per annum on the
enhanced compensation.**

3. That both respondents No.1 and 2 are directed to deposit the enhanced compensation with interest at 7.5% per annum from the date of petition till the date of Judgment within two months.
4. That There shall be no order as to costs in this appeal

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SD/- B. CHITTI JOSEPH
ASSISTANT REGISTRAR
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SECTION OFFICER

To,

1. The VI Addl. District & sessions Judge-cum-Motor Accident Claim Tribunal, Kurnool District.
2. Two CD Copies

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HIGH COURT

DATED:31/03/2023

DECREE

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19/8/2023

ALLOWING THE MACMA

