

APHC010187962023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

MONDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 237/2023

Between:

1. UNNAM KONDALA RAO, S/O. KRISHNA MURTHY, AGED ABOUT 48 YEARS, R/O.D.NO.25-2-30, GORANTLA, NAGARALU, GUNTUR.

...APPELLANT

AND

1. SOMEPALLI SRINIVASA RAO, S/O. VENKATESWARLU, R/O.D.NO.18-39-1/A, KAMMA BAZAR, SANGADIGUNTA, GUNTUR. (OWNER-CUM-DRIVER OF THE LORRY BEARING NO.AP07.TB.6888)

2. NATIONAL INSURANCE CO LTD, REP. ITS DIVISIONAL MANAGER, GARLAPATI COMPLEX, ALIBAGH STREET, GOVERNORPET, VIJAYAWADA, POLICY NO.560702311710003840 VALID FROM 28.02.2018 TO 27.02.2019.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court pleased to set aside the Award and Decree passed in M.V.O.P.No.515 of 2018, Dt.02.01.2023 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur and pass

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Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 2 days in preferring the present MACMA against the Award and Decree passed in MVOP No.515 of 2018, dt.02.01.2023 on the file of MACT-cum-IV Additional District Judge, Guntur, and pass

Counsel for the Appellant:

1.B PARAMESEWARA RAO

Counsel for the Respondent(S):

1.

2.T S RAYALU

The Court made the following:

JUDGMENT:-

The appellant/claimant filed this appeal aggrieved by order dated 02.01.2023 passed by the Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, Guntur in M.V.O.P.No.515 of 2018, whereby the Tribunal awarded Rs.7,61,271/- only as against the claim of Rs.9,00,000/- for the injuries sustained by him.

2. For the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

3. On 10.03.2018, at about 06.00 a.m., while the claimant was proceeding in his lorry from Tenali to Guntur, at Coca Cola Company, Atmakur panchayat, Mangalagiri mandal, one lorry bearing No.AP 07 TB 6888 driven by the 1st respondent in opposite direction, hit the lorry driven by the claimant due to which, the claimant is said to have fell down and sustained grievous injuries (fracture of right pelvic ball and other injuries); immediately the claimant was shifted to Government General hospital, Vijayawada and subsequently to M.J. Naidu hospital, Vijayawada, where he was treated as inpatient. The incident was reported to Police and accordingly, a case was registered in Crime No.77 of 2018 for the offence punishable under Section 337 of the Indian Penal Code against the 1st respondent. The claimant is said to have spent Rs.4,00,000/- for his treatment and has been deprived of natural pleasure of walking, running and doing personal work due to the accident. Hence, he filed the claim petition seeking compensation of Rs.9,00,000/-.

4. The 1st respondent remained exparte. The 2nd respondent/insurance company contested the claim petition by filing a written statement wherein negligence on the part of the 1st respondent

was denied and it was contended that the vehicle of the 1st respondent is not insured as on the date of accident. It was further contended that the petition is bad in law for non-joinder of proper parties as the claimant failed to implead the owner and insurer of the lorry in which he was travelling.

5. Basing on the above pleadings, the Tribunal framed the following issues for trial:

- 1) *Whether the accident occurred due to rash and negligence of driver of lorry bearing No.AP07 TB 6988?*
- 2) *Whether the petitioner is entitled to compensation for the injuries sustained by him in the accident, if so, to what amount and from whom?*
- 3) *To what relief?*

6. During the course of trial, P.Ws.1 to 2 were examined and Exs.A1 to A9 were marked on behalf of the claimants; no oral or documentary evidence was adduced by the respondents.

7. The Tribunal, after considering all the facts and material available before it, came to the conclusion that the accident occurred due to the rash and negligent driving of the 1st respondent and further awarded Rs.7,61,271/- of compensation to the claimant for the injuries sustained by him in the accident occurred on 10.03.2018. Aggrieved by the same, the claimant has filed the present appeal seeking enhancement of the same.

8. Heard Sri. B. Parameswara Rao, learned counsel for the appellant and Ms. M. Deepa, learned counsel representing Sri. T. S. Rayalu, learned counsel for the 2nd respondent.

9. Perused the entire material available on record. Admittedly, the claimant, who got injured in the alleged accident was examined as P.W.1 whereby, he narrated the entire incident. Relying upon the evidence of P.W.1 coupled with Ex.A1 – FIR filed against the 1st respondent and Ex.A2 – charge sheet filed before the jurisdictional magistrate against the 1st respondent, the Tribunal rightly held that the accident occurred due to the rash and negligent driving of the 1st respondent alone and accordingly, it answered issue No.1 in favour of the claimant. In the absence of any rebutting evidence, the Tribunal has rightly answered issue No.1 by holding that the 1st respondent alone is responsible for the accident.

10. Insofar as quantum of compensation is concerned, the claimant contended that he is aged about 47 years as on the date of accident and used to earn Rs.10,000/- per month. However, in the absence of any convincing evidence to prove the same, the Tribunal considered the notional monthly income of the claimant as Rs.6,500/-. To prove that the claimant suffered grievous injuries, he got examined the orthopedic in M.J. Naidu super specialty hospital, Suryaraopet, Vijayawada as P.W.2 who deposed that the claimant was admitted in the hospital as inpatient on 27.03.2018 with right hip infected fracture which was operated with Debridment plus negative suction in multiple sittings and that he was discharged on 15.05.2018. He further deposed that the claimant could not walk without support as around 4 to 6 centimeters of shortening is present in his right lower limb compared to the left. He assessed the disability of the claimant to be 40% – 45%.

11. Considering the evidence of P.Ws.1 and 2 coupled with Exs.A1 to A9, the Tribunal assessed the functional disability of the claimant as

35%. The Tribunal computed the loss of monthly income of the claimant as Rs.2,275/- [35% of Rs.6,500/-]. In addition, the Tribunal also added 25% towards future prospects for the disability sustained by the claimant. Thus, the total amount computed under the head of loss of monthly income is Rs.2,843/- [Rs.2,275/- + Rs.568/- (25% of Rs.2,275/-)] and the annual loss of income would become Rs.34,116/- [Rs.2,843/- X 12]. As the claimant was aged 47 years, the relevant multiplier as per **Sarla Verma and Ors. V. Delhi Transport Corporation and another** is '13'. In total, the claimant is entitled for compensation of Rs.4,43,508/- [Rs.34,116 X 13] towards loss of earning for the disability of the claimant.

12. It can be seen from the material available on record that the claimant filed medical bills (Exs.A5 and A6) which were paid by him for his treatment amounting to Rs.3,17,763/-, which amount is also liable to be reimbursed to the claimant. In total, the Tribunal awarded Rs.7,61,271/- [Rs.4,43,508/- + Rs.3,17,763/-] to the claimant as compensation and directed the respondents to jointly pay the same to the claimant along with 7.5% interest from the date of petition till the date of deposit. The amount awarded by the Tribunal to the claimant as compensation is just and reasonable as the claimant failed to put forth cogent material to prove his contention that he used to earn Rs.10,000/- per month. Even otherwise, nothing prevented the claimant from obtaining a disability certificate issued by the concerned so that his disability could be assessed accurately instead of presumptions and assumptions.

13. In view of the foregoing discussion, this Court finds no ground to interfere and enhance the compensation awarded by the Chairman,

Motor Accidents Claims Tribunal – cum – IV Additional District Judge,
Guntur by way of the impugned order dated 02.01.2023.

14. Accordingly, this appeal is dismissed. There shall be no order
as to costs.

Consequently, miscellaneous applications pending, if any, shall stand
closed.

JUSTICE V. SUJATHA

Date:20.04.2026.

Gss