

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.1063 of 2004

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JUDGMENT:

This appeal is by the injured claimant assailing the award dated 29.11.2003 passed in MVOP.No.289 of 1999 by the learned Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Guntur.

2. I have heard the submissions of the learned counsel for the appellant/claimant ('the claimant' for brevity) and the learned counsel for the sole respondent/APSRTC ('the respondent' for brevity).

3. The facts leading to the filing of the present appeal by the claimant may be stated, in brief, as follows: "The claimant, who had sustained injuries in a motor vehicle accident, which had occurred on 05.03.1999, had claimed a compensation of Rs.1 lakh. The respondent had resisted the application by raising various contentions. Before the Tribunal, the claimant and two Doctors were examined as PWs1 to 3 and exhibits A1 to 4 and X1 to X3 were marked. An officer of the respondent-Corporation was examined as RW1. On merits, the Tribunal, while holding that the pleaded accident resulting in injuries to the claimant had occurred due to the rash and negligent driving of the driver of the bus bearing registration no.AP 10Z 6377 had awarded a compensation of Rs.26,000/- payable with interest at 6% per annum simple from the date of the petition and had directed the respondent to pay the said compensation besides proportionate costs. Having not been satisfied with the award, the claimant had filed this appeal for determination of just and fair compensation. It is stated that no appeal or cross objections are filed by the respondent."

4. (a) The learned counsel for the claimant would contend as follows: - 'The Tribunal ought to have awarded just compensation. The Tribunal ought to have seen that the claimant had suffered permanent disability and, therefore, has to depend upon an attendant for the rest of his life. The Tribunal had not awarded compensation under all the heads. The Tribunal had ignored the evidence adduced by the claimant and had awarded a paltry amount of compensation without properly appreciating the facts and the evidence. The Tribunal ought to have awarded just and fair compensation, if necessary, by awarding more compensation than claimed by following the settled legal position. Hence, reasonable, just and fair compensation to which the claimant is entitled to under facts and in law may be awarded by allowing the appeal.'

4. (b) On the other hand, the learned counsel for the respondent submitted that the claimant sustained only one grievous injury and that the Tribunal having properly appreciated the oral and documentary evidence had rightly awarded a compensation of Rs.26,000/- after taking into consideration all the facts and circumstances which are relevant and that the claim for enhanced compensation is baseless and that no valid and sufficient grounds are made out for enhancing the compensation and that the appeal is devoid of merit and is liable to be dismissed.

5. The points that arise for determination in this appeal are:

**Whether the compensation awarded by the Tribunal is not just and fair in the facts and circumstances urged by the claimant?
And, if so, what shall be the just and fair compensation to be awarded to the claimant in this appeal?**

6. POINTS:

6. (a) On the aspect of injuries and allied aspects, the case of the claimants is this: 'In the accident the claimant had sustained bleeding injuries on his right leg besides a fracture injury and multiple injuries all over the body. The said injuries caused heavy pain. He was immediately shifted to the Government Hospital, Tenali. Since he had sustained grievous injuries, the Doctors advised him to take bed rest and healthy food. On account of the injuries sustained in the accident, he became a dependant on his family members and is unable to perform his regular duties. One person has to regularly attend on him. Earlier, he was hale and healthy and used to

sell betel leaves and earn Rs.70/- per day and maintain his family with those earnings. After the accident he became permanently disabled and had lost his earning capacity.'

6. (b) On the other hand, the defence of the respondent is in the nature of general and specific denial and the respondent had put the claimant to strict proof of his pleaded case in this regard and also the claimant's entitlement to the compensation.

6. (c) PW1 while testifying in line with his pleaded case had stated that he had received bleeding injuries over his right leg toe, right foot, right ankle, right knee, left knee, left toe and upper part of his right leg and also multiple injuries all over the body. He had exhibited exhibit A3-the wound certificate and exhibit A4-four OP chits in a bunch. In his cross examination, he had admitted that he had not produced any evidence to show the medical and other expenses incurred by him though he had stated that he had spent Rs.20,000/- towards medical expenses, Rs.10,000/- on special diet, Rs.10,000/- on attendant and Rs.5,000/- on transport. The Doctor/**PW2**, who is a Deputy Civil Surgeon in Government Hospital, Tenali had testified that on 05.03.1999 at 08:30 PM he had examined PW1 in the hospital and found that he had sustained the following injuries:

1. Lacerated injury of the size 2" x 1" x ½" over the dorsum of the right big toe. Horizontal in direction. Bleeding and fresh.
2. Lacerated injury of the size 4" x 1" x ½" over the medial aspect of right foot. Bleeding and vertical in direction.
3. Abrasion of the size 1" x ½" over the base of the right big toe. Fresh and bleeding.
4. Lacerated injury of 1" x ½" x 1" in between the right big toe and second toe. Fresh and bleeding.
5. Lacerated injury of the size 3" x ½" x ½" over the dorsum of the right foot in between the 4th and 5th toes. Fresh and bleeding.
6. Lacerated injury of the size 4 ½" x 2" x ½" over the right medial malleolus. Fresh and bleeding- exposing the underling tendon and muscle.
7. Abrasion of the size 1" x ½" over the right knee - fresh and bleeding.
8. Abrasion of the size 4" x 2" over the medial aspect of right knee. Fresh and bleeding.
9. Abrasion of 1" x ½" x ½" over the left knee. Fresh and bleeding.
10. Abrasion of the size ½" x ½" over the left big toe.
11. Abrasion of the size ½" x ½" over the left 5th toe. Fresh and bleeding.
12. Contusion of the size 4" x 3" x 3" over the outer side of right leg in its upper part round and red in colour."

According to the evidence of this Doctor and the accident register, which is exhibited as exhibit X1, PW1 was admitted as inpatient on 05.03.1999 and had received inpatient treatment till 10.03.1999. This Doctor gave exhibit X2-certificate basing on the opinion of the radiologist opining that injury no.5 is grievous while the other injuries are simple in nature. **PW3** another Doctor who is an Assistant Professor of Radiology in Government Hospital, Guntur deposed that on 10.3.1999 the claimant was referred to him and that X-rays were taken to the right knee, right leg and right foot with ankle and that the X rays revealed that PW1 had suffered fracture of base of 4th metatarsal bone, which is a grievous injury and no other fractures.

6. (d) Thus, I have carefully gone through the evidence. The evidence on record shows that apart from the 5th injury which is a fracture injury to the bone/s of the right foot, the claimant had sustained four lacerations and one contusion and six abrasions which are noted supra. Even simple injuries cause painful experience to the victim and take a minimum of two to three weeks' time for complete healing. Major injuries like fractures take 4 to 6 weeks or 6 to 8 weeks time for total healing depending upon the nature of fracture and other factors. A further time of one or two months is generally required for physiotherapy and getting normal movements of the limb. The shock, pain and suffering at the time of accident, pain, discomfort and inconvenience during the period of treatment, hospitalisation, bed rest and physiotherapy can be visualised taking into consideration the day to day human experience. For six abrasions, a compensation of Rs.6,000/- is awardable and for four lacerations a compensation of Rs.8,000/- is awardable and Rs.21,000/- is awardable towards the grievous injury, which is a fracture of 4th metatarsal of right foot. In all, the claimant is entitled to a compensation of Rs.35,000/- under the head 'injury', 'shock', 'pain' and 'suffering' and the same is accordingly awarded.

6. (e) As regards hospital, medical, transport, attendant, extra nourishment and other expenses, it is to be noted that the claimant had suffered in all twelve injuries which are referred to supra and one of such injuries is a fracture. He received inpatient treatment for about a week in the Government Hospital, Guntur as per the evidence of PW2-the Doctor who had treated him. PW1 pleaded and deposed that after his discharge from the Government Hospital he was bedridden for nine months and had taken treatment as outpatient from different private hospitals and that he had spent

Rs.20,000/- towards medical expenses, Rs.10,000/- on special diet, Rs.10,000/- on attendant and Rs.5,000/- on transport. However, he did not file any bills in support of the said oral evidence except OP chits. The Doctors did not support his evidence that he was advised bed rest. It is common knowledge that even patients receiving treatment in Government Hospital also incur expenditure on medicines purchased from outside, transport, extra nourishment, attendant, besides other incidental charges. During the period of hospitalisation and till the injuries healed, a person might have attended upon him cannot be disputed. In a decision in **Managing Director, APSRTC v. Kathavath Gopal and another**, this Court held that compensation towards expenditure incurred on extra nourishment and transport cannot be denied even though treatment was given in Government Hospital and one cannot expect positive evidence proving actual expenditure and hence some reasonable hypothesis cannot be ruled out. In the facts and circumstances of the case, a sum of Rs.20,000/- is awardable as compensation under the heads 'hospital, medical, extra nourishment, attendant's, transport and incidental charges'; and, the same is accordingly awarded.

6. (f) As regards the claim under the head 'loss of earnings (past)', the pleaded case and the evidence of PW1 is that he had received inpatient treatment for about a week and had taken bed rest for nine months and that he is the only earning person in the family and that he used to earn Rs.2,100/- per month on his betel leaves business and that on account of his involvement in the accident, he had lost his earnings and also earning capacity and suffered financially and that he had to borrow Rs.50,000/- from his kith and kin. As already noted, the Doctors have not stated that PW1 had suffered any permanent/partial disability and that he cannot attend to his business. Having regard to the injuries sustained, it is reasonable to accept that the claimant was out of work/business for about three months. Therefore, taking his monthly income at Rs.2,000/- a compensation of Rs.6,000/- is awarded towards loss of earnings (past). As the two Doctors/PWs2 and 3 did not speak about any disability which is either of permanent or partial nature in their evidence and as no disability certificate is also filed, no compensation is awardable under the head of 'loss of earnings (present and future)'.

6. (g) The claimant had suffered only one fracture viz., fracture of base of 4th

metatarsal bone, which is a grievous injury. He was aged about 25 years as on the date of the accident. Though he did not prove that he had suffered any permanent disability or functional disability with the said healed injury to the limb, he cannot move briskly and run as in the past and his said condition certainly comes in the way of enjoyment of his life. Therefore, Rs.5,000/- is awarded under the head ‘loss of enjoyment of life.’

Accordingly, the claimant is entitled to the following compensation amounts:

Sl.No.	Head of compensation	Amount(in Rs.)
(1)	Injury, shock, pain and suffering	35,000-00
(2)	Hospital, medical, extra nourishment, attendant's, transport and incidental charges	20,000-00
(3)	Loss of earnings (past)	6,000-00
(4)	Loss of enjoyment of life	5,000-00

Total	66,000-00
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(Rupees Sixty Six Thousands only)

6. (h) In the facts and circumstances of the case, the claimant is not entitled to any other compensation amounts. Thus, as per the determination supra, the just and fair compensation to which the claimant is entitled to is Rs.66,000/-. The said compensation is accordingly awarded. The rest of the claim is disallowed. The points are accordingly answered.

7. Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award interest at the rate of 7.5% per annum simple on the said enhanced compensation amount.

8. In the result, the appeal is allowed, in part, with proportionate costs awarding a total compensation of Rs.66,000/- (Rupees Sixty Six Thousand only). On the compensation already awarded, the trial Court granted interest at 6% per annum simple. Having regard to the facts and circumstances, the respondent/Corporation is directed to pay by way of demand draft in favour of the appellant/claimant the enhanced portion of compensation i.e., Rs.40,000/- with interest at 7.5% per annum simple from the date of the original petition till the payment or realisation and also proportionate costs or deposit the same before the Tribunal within two months from the date of the receipt of a copy of this judgment. The already awarded

compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be paid or deposited accordingly. In case of deposit of the said sums before the Tribunal, the claimant is entitled to receive the same without furnishing any security.

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

M. SEETHARAMA MURTI, J

20th March, 2015

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