

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.1220 of 2004

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**JUDGMENT:**

This appeal by the injured claimant in MOP.No.362 of 2001 is directed against the common award dated 03.02.2004 passed in MOP.Nos.360 and 362 of 2001 by the learned Chairman, Motor Accidents Claims Tribunal-cum- District Judge, Vizianagaram.

2. I have heard the submissions of the learned counsel for the appellant/claimant ('the claimant' for brevity) and the learned counsel for the 3<sup>rd</sup> respondent/insurance company ('insurance company' for brevity). The 1<sup>st</sup> respondent is the driver of the lorry involved in the accident and he was stated to be a not necessary party to this appeal. This appeal against the 2<sup>nd</sup> respondent/owner-cum-insured was dismissed for default. Even though this appeal is dismissed against the owner-cum-insured of the vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company in view of a judgment of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others.**

2. (a) The parties in this appeal shall hereinafter be referred to as the claimant and the Insurance Company for convenience and clarity.

**3.** The case of the claimant and the facts leading to the filing of this appeal, in brief, are as follows:

On 01.10.2000 the claimant and others started on a moped to go to Nathavalasa. While the moped was proceeding on the far left side of the road and had reached a place near Nathavalasa junction at about 10:45 AM, a lorry bearing registration No. KA 01-B 2444 being driven by the 1<sup>st</sup> respondent at a high speed and in a rash and negligent manner came from the opposite direction and dashed the said moped. In the said accident, the claimant had sustained injuries. The injuries resulted in permanent partial disability. Therefore, she had filed the claim petition claiming a compensation of Rs.1 lakh. The respondents 1 and 2, the driver and the owner/insured of the said lorry, had remained ex parte. The Insurance company had filed a written statement resisting the claim on various grounds. At trial, the claimant herein was examined as PW1 and the Doctor who had treated her was examined as PW2. Exhibits A3, A6, A7, X1, X3 were marked on her side. On merits, the Tribunal, having held that the pleaded accident resulting in injuries to the claimant had occurred due to the rash and negligent driving of the driver of the lorry bearing registration no. KA 01-B 2444, had awarded a compensation of Rs.32,000/- (Rupees Thirty Two Thousands Only) payable with interest at 9% per annum simple from the date of petition till the date of payment or realisation besides proportionate costs and had also held that the respondents 1 to 3 i.e., the driver, the insured/2<sup>nd</sup> respondent and the 3<sup>rd</sup> respondent/insurer of the said lorry are all jointly and severally liable to pay the same to the claimant and had accordingly directed them to pay the compensation to the claimant. Not having been satisfied with the quantum of compensation awarded, the claimant had preferred this appeal. It is stated that no appeal or cross objections are filed by the 3<sup>rd</sup> respondent/insurer.

**4. (a)** The learned counsel for the claimant would contend as follows: - 'The Tribunal had awarded a meagre amount of Rs.20,000/- towards 'partial permanent disability', Rs.2,000/- under the heads 'transport, extra nourishment and incidental expenses' and Rs.10,000/- under the head 'pain and suffering' though the claimant had suffered seven injuries including grievous injuries, which had resulted in permanent partial disability to the extent of 25%, and the said disability had an impact on her earnings and earning capacity. The Tribunal had not awarded adequate amount under the head 'medical, hospital and other expenses' and had failed to award any

compensation under the heads 'loss of earnings (past, present and future)' and other general/conventional heads. Hence the appeal may be allowed and just and fair compensation be awarded.'

**4. (b)** On the other hand, the learned counsel for the Insurance Company would contend that the claimant is a house-wife and that she had suffered simple injuries and that the injuries had healed after simple treatment and that she did not suffer any disability of any kind and that the Tribunal had properly appreciated the facts and the evidence and had awarded a compensation, which is just and fair, and that the claimant is not entitled to any enhanced 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)** As regards the injuries and other allied aspects, the case of the claimant is this: 'The claimant had sustained fracture of her left shoulder bone besides other injuries all over her body. She was taken to District Head quarters Hospital, Vizianagaram; and, subsequently she was admitted in City hospital, Visakhapatnam. She had later received treatment as an outpatient. She was using medicines and taking extra nourishment even as on the date of filing of the claim petition. Two persons had attended on her and helped her in attending to her daily chores. She is a house wife and was hale and healthy at the time of accident. On account of the fracture injury sustained by her she could not attend to her work and she had suffered permanent disability and is not in a position to attend to her household duties. She is unable to lift weights with her left hand. She had appointed a maid servant and had paid Rs.600/- per month. She had suffered pain and mental agony at the time of accident and during course of treatment. She had suffered loss of amenities of life and pleasures of life at an age of 45 years. She had already spent lot of amounts on her medicines, transport to hospital and extra nourishment charges.'

**6. (b)** On the other hand, the case of the Insurance Company on this particular aspect is in the nature of general and specific denial and the Insurance Company

had put the claimant to strict proof of her pleaded case in this regard and also her entitlement to compensation.

**6. (c)** PW1 had testified as under: 'I received injuries on my left collar bone and right wrist; and my teeth were loosened. I was taken to the Government Hospital, Vizianagaram. I had received treatment for ten days as an in patient. Later, I had received treatment in the City Hospital, Visakahaptnam for a period of four days. I had spent Rs.15,000/- on medicines. After the accident, I am not able to do my household duties. I had paid Rs.600/- per month to the servant maid. I cannot lift any weights and do hard work with my left hand.' She had exhibited exhibit A3-the wound certificate. She had maintained her stand in her cross-examination by denying the suggestions given in line with the defence. She had admitted that she is having one daughter and her husband is working in a gas company and that she did not file any documents like prescriptions or medical bills showing the amounts spent on medicines and that she did not also file any documents to show that she had paid Rs.600/- per month to a servant maid. PW2 is said to be an eye witness to the accident. **PW3**-the Doctor had deposed about the details of the 7 injuries sustained by PW1 including the fracture of left clavicle and the treatment received by her as inpatient and outpatient and the non union of the fractured bones and the disability suffered by her to the extent of 25%, which is permanent and partial. In his evidence, exhibit X1-an X ray, exhibit X2-the case sheet maintained by the District Headquarters Hospital, Vizianagaram, exhibit A6-another X-ray and exhibit A7-the disability certificate of PW1 were exhibited. In his cross-examination, he had denied the suggestions that PW1 had not sustained any fracture of clavicle and that the injuries sustained by PW1 are not grievous in nature and that she can do hard work and lift weights and attend to her duties as in the past and that he had assessed the disability on the higher side.

**6. (d)** Thus, I have carefully gone through the evidence. A perusal of the oral and the documentary evidence, particularly the exhibit A3 and the evidence of Doctor, would show that PW1 had sustained the following injuries: 1) **Swelling over right side fore head painful; 2) swelling of nose painful; 3) 15 cm x 5 cm abrasion over right shoulder red in colour with pain in right shoulder; 4) pain over left collar bone; 5) 4 cm x 2 cm abrasion over right wrist bright red in colour; 6) pain in chest; 7) 2 cm x 2 cm abrasion over the right knee bright red in colour.** The wound certificate on a further perusal would show that an X-ray taken had revealed

fracture of left clavicle and that therefore, injury no.4 is certified as grievous in nature. The doctor, who had supported the case of PW1, had stated that PW1 was treated conservatively by applying bandage and that she was discharged on 04.10.2000 with an advice to have follow-up treatment as an outpatient. According to the Doctor/PW3, he had again examined PW1 and that at that time X-rays were taken and that those X-rays had revealed that the fracture had united in mal position and that, therefore, he had certified that PW1 had suffered 25% disability, which is permanent and partial in nature. 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 the 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, the 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. Having regard to the evidence which is adverted to supra, a sum of Rs.45,000/- is awarded as compensation under the heads 'injury', 'shock', 'pain' and 'suffering'.

**6. (e)** As regards the claim under the heads 'hospital, medical, transport, attendant, extra nourishment and other expenses', it is to be noted that the claimant had received conservative treatment as an inpatient in Government hospital, Vizianagaram for a period of four days. As per the version of PW1, she had also received treatment as an inpatient in the City Hospital, Visakahaptnam for some time. According to her, she had spent Rs.15,000/- on medicines etcetera; however, as admitted by her, she did not produce any documentary evidence, like medical bills etcetera. It is common knowledge that patients receiving treatment even 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 bed rest, a person might have attended upon her cannot be disputed. The claimant had received inpatient treatment for nearly two weeks according to her version. In a decision in **Managing Director, APSRTC v. Kathavath Gopal and another** this Court had held that compensation towards expenditure incurred on extra nourishment and transport cannot be denied even

though treatment was given in a 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.15,000/- 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)** Coming to the claim of loss of earnings, PW1 is a house wife and a non earning member. According to her, during the period of her hospitalisation and treatment, she had engaged the services of a maid by paying Rs.600/- per month. However, she did not examine the said maid who had served her during the period of hospitalization and treatment. Already, the claim for compensation under the head 'attendant charges' was considered while awarding compensation of Rs.15,000/- supra. Therefore, no compensation is awardable under the head 'loss of earnings' and amounts spent towards services of maid.

**6. (g)** Coming to the claim of compensation under the group of heads 'permanent partial disability', 'functional disability', 'loss of enjoyment of life', 'loss of pleasures of life', 'loss of amenities of life' etcetera, it is necessary to recall that the Doctor testified that PW1 had suffered 25% disability, which is permanent and partial in nature. This disability was assessed due to mal union of the fractured clavicle. The doctor did not state in his evidence that PW1 cannot attend to her duties as a housewife. He did not specifically speak in his examination in chief the impact of the disability on her functional capacity. PW1 had stated that she cannot lift weights and that she cannot do hard work with her left hand. Further, when it was suggested to PW3 in the cross examination that PW1 can do hard work and lift weights as she used to do prior to the accident, he had denied the said suggestions. Therefore, it can be gathered from the evidence that PW1 has some difficulty in lifting weights and doing hard work with her left hand. A housewife like PW1, who is having a mal-united clavicle, cannot work with the same ease as in the past and she in her present condition cannot be equated to a normal healthy housewife, cannot be disputed. Since the disability was assessed with reference to one upper limb, which is  $\frac{1}{6}^{\text{th}}$  of the whole body, the functional disability is determined at 10% and a compensation of Rs.25,000/- is awarded under the group of heads 'permanent partial disability', 'functional disability', 'loss of enjoyment of life', 'loss of pleasures of life', 'loss of amenities of life' etcetera.

6. (h) Accordingly, the claimant is entitled to the following compensation amounts:

| Sl.No. | Head of compensation                                                               | Amount(in Rs.) |
|--------|------------------------------------------------------------------------------------|----------------|
| (1)    | Injury, shock, pain and suffering                                                  | 45,000-00      |
| (2)    | Hospital, medical, extra nourishment, attendant's transport and incidental charges | 15,000-00      |
| (3)    | Permanent/Functional disability etcetera                                           | 25,000-00      |
| Total  |                                                                                    | 85,000-00      |

**(Rupees Eighty five Thousand only)**

6. (i) In the facts and circumstances of the case, the claimant is not entitled to any other compensation amounts. The rest of the claim is disallowed. Thus, as per the determination supra, the just and fair compensation to which the claimant is entitled to is Rs.85,000/-. The said compensation is accordingly awarded. 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. On the compensation already awarded, the Tribunal granted interest @ 9% per annum simple.

8. In the result, the appeal is allowed in part with proportionate costs awarding a total compensation of Rs.85,000/- (Rupees Eighty Five Thousands only). Having regard to the facts and circumstances, the insurance company is directed to pay by way of demand draft in favour of the appellant/claimant the enhanced portion of compensation i.e., Rs.53,000/- (Rupees Fifty Three Thousands only) with interest at 7.5% per annum simple from the date of the original petition till the date of payment 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.

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**M. SEETHARAMA MURTI, J**

17<sup>th</sup> April, 2015

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