

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.4809 of 2004

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JUDGMENT:

This appeal by the injured claimant is directed against the award dated 21.07.2004 passed in MVOP.No.268 of 2002 by the learned Chairman, Motor Accidents Claims Tribunal-cum-XI 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 second respondent/insurance company ('second respondent' for brevity). This appeal against the 1st 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.**

3. The introductory facts, in brief, are as follows:

The claimant who had sustained injuries in a motor vehicle accident that took place on 24.01.2002 had claimed a compensation of Rs.1 lakh. The 1st respondent-owner-cum-insured had remained ex parte before the Tribunal. The 2nd respondent

had resisted the claim on various grounds. During the course of trial before the Tribunal, the claimant and a Doctor were examined as PWs1 and 2 and exhibits A1 to A6 were marked. No oral and documentary evidence was adduced on the side of the 2nd respondent. 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 lorry bearing registration no.AP 7E 8697, had awarded a compensation of Rs.25,000/- 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 both the respondents i.e., the insured/1st respondent and the 2nd respondent/insurer are 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 2nd respondent/insurer.

4. (a) The learned counsel for the claimant would contend as follows: - 'The Tribunal had failed to consider that the claimant had sustained grievous injuries. The Tribunal had erred in granting a compensation of Rs.10,000/- only towards future medical expenses and in not granting any amount towards loss of future earnings. In the facts and circumstances of the case and in view of the evidence brought on record, the Tribunal ought to have awarded more compensation than claimed by the claimant as it is the duty of the Tribunal to award just and fair compensation having regard to the facts and circumstances of the case. Reasonable, just and fair compensation to which the claimant is entitled to may be awarded.'

4. (b) On the other hand, the learned counsel for the 2nd respondent would contend that the Tribunal had awarded a compensation of Rs.15,000/- towards pain and suffering and Rs.10,000/- towards future medical expenses by taking into consideration, the deposition of PW2, the doctor, who had deposed about the said expenditure in his evidence and that the Tribunal had properly appreciated the evidence and 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: 'In the accident the claimant had sustained fracture injury to his right leg besides multiple injuries all over the body. Immediately after the accident he was admitted in Government General Hospital, Guntur and had received inpatient treatment. Subsequently, he had taken treatment from an expert in a private hospital, Guntur. On account of the injuries he had suffered mental agony and pain. Due to financial loss he was put to starvation. Prior to the accident he was hale and healthy and, he used to work in Lalitha Hospital, Guntur and earn Rs.3,000/- per month and spend the same on the maintenance of his family. On account of the injuries sustained in the accident, he is not in a position to do any work as in the past.'

6. (b) On the other hand, the case of the 2nd respondent on this particular aspect is in the nature of general and specific denial and the 2nd respondent had put the claimant to strict proof of his pleaded case in this regard and also the claimant's entitlement to compensation.

6. (c) PW1 had testified as under: 'He sustained an injury to his right leg after he had fallen down from his vehicle. He was admitted in Government Hospital. He underwent an operation to his right leg. The fracture was corrected by fixing an implant. He is still having the implant in his leg. He was treated for 28 days as inpatient. Later he had received out patient treatment from a private hospital. Prior to the accident he used to work as a compounder in Lalitha Super Speciality Hospital and used to receive Rs.2,000/- per month towards his salary. After the accident he was removed from service as he is unable to carry the patients of the said hospital. He is not in a position to walk with ease. He is the sole bread winner of the family. He had spent about Rs.20,000/- on his treatment.' He had exhibited exhibit A3-the wound certificate, exhibits A4 and A5-OP chits and exhibit A6-an X-ray film. In his cross examination, the following points were elicited. 'I have no documentary evidence to show that I had spent Rs.20,000/- on medical expenses. Now I am not doing any work. I have no documentary evidence to show that I had earlier worked in a hospital and used to earn Rs.2,000/- per month. There was no medical

invalidation.’ He had denied the suggestion that he did not sustain any physical disability on account of the injuries sustained in the accident. He had admitted that he did not file any disability certificate. He had denied the further suggestion that the wounds/injuries sustained in the accident had completely healed. **PW2**, the Doctor, had testified that on 24.01.2002 PW1 was admitted in Government Hospital, Guntur for compound fracture of right tibia and that he had performed an operation on 08.02.2002 and that PW1 was discharged on 20.02.2002 and that his case was followed up in the OP. According to him the fracture was corrected by fixing implant and that PW1 was still having that implant in his right leg and that PW1 has to undergo one more operation for removal of the implant and that PW1 is complaining heavy pain in knee joint and that there is no physical deformity or shortening of right lower limb. However, he had also testified that it is not advisable for PW1 to carry any weights and climb steps and that PW1 requires Rs.5,000/- to 10,000/- for a second operation. In his evidence, exhibit A6-X-ray film and exhibit X1-case sheet maintained in the Government hospital were exhibited. In his cross examination, he had affirmed that one of the screws of the implant is to be removed immediately for consolidation of fracture and that after one year, if discomfort still persists or further complications arise, the steel implants have to be removed by way of operation and that after removal of the screw only it will be known as to whether a further surgery would be required or not. He had also testified that after the fracture heals PW1 can climb stairs and have free movements and that PW1 had not sustained any permanent disability.

6. (d) Thus, I have carefully gone through the evidence. The evidence on record shows that PW1 had sustained a major fracture i.e., compound fracture of tibia of right leg. He had undergone an operation and the fracture was corrected by fixing an implant. The evidence of the Doctor-PW2 supports the evidence of PW1 on these aspects. PW1 was aged about 56 years at the time of accident. 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. Therefore, a sum of Rs.35,000/- is

awardable as compensation under the heads '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 underwent a major operation in a Government Hospital and that according to him he had spent Rs.20,000/- on his treatment. However, he did not file any medical bills or other bills in support of his claim for compensation under the above heads. He had, however, testified that after his discharge from the Government Hospital, he received outpatient treatment. Though PW1 had testified that he had received further treatment from a private hospital, no documentary evidence is produced and not even the names of the hospital and the Doctor are mentioned in his evidence. However, the evidence of PW2 supports the evidence of the PW1 in regard to the inpatient treatment received and the operation undergone by PW1 in the Government Hospital. It is common knowledge that 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, a person might have attended upon him cannot be disputed. The claimant had received inpatient treatment for nearly three weeks. 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) Coming to the medical expenditure (future), the Tribunal had awarded Rs.10,000/- as PW2/the Doctor had testified that PW1 has to incur an expenditure of Rs.5,000/- to Rs.10,000/- on further operation for removal of the screw fixed to the implant. However, PW2 had also stated that one of the screws of the implant is to be removed immediately for consolidation of the fracture and that after one year, if discomfort still persists or further complications arise, the steel implants have to be

removed by way of operation and that after removal of the screw only it would be known as to whether further surgery is required or not. Taking into consideration the evidence of the Doctor, Rs.20,000/- is awarded under the head 'medical expenditure (future)'.

6. (g) As regards the claim under the head 'loss of earnings (past)', the pleaded case and the evidence of PW1 is that he used to work as a compunder in Super Speciality Hospital and used to earn Rs.2,000/- per month. No documentary evidence was produced in support of the said contention. He being an able-bodied and healthy male person prior to the accident, his income at any rate can be accepted at Rs.2,000/- per month. Having regard to the injury suffered and the evidence given by the Doctor, it is reasonable to accept that PW1/claimant was out of work for atleast a period of six months. Therefore, Rs.12,000/- is awarded under the head 'loss of earnings (past)'.

6. (h) Coming to the loss of earnings (present and future), the claimant did not file any document to show that he was removed from service of the hospital in which he used to work prior to his involvement in the accident. He was at the advanced age of 56 years at the time of accident. Be that as it may, he did not file any disability certificate and the Doctor-PW2 had also not stated that the grievous injury had resulted in any kind of permanent/partial disability. Therefore, the claimant did not suffer in any functional disability and his earning capacity was not affected. On the other hand, the Doctor deposed that at the time of examination, PW1 had stated that he is experiencing some pain in the knee and that there is no physical deformity or shortening of the limb and that after the injury heals, PW1 can carry weights and climb stairs and that there will not be any disability. Therefore, no compensation is awardable under the head 'loss of earnings (present and future)'.

6. (i) The claimant suffered a major fracture of a bone of one lower limb. 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)	12,000-00
(4)	Medical expenditure(future)	20,000-00
(3)	Loss of enjoyment of life	5,000-00
Total		92,000-00

(Rupees Ninety two thousands only)

6. (j) 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.92,000/-. 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.92,000/- (Rupees Ninety Two Thousand only). On the compensation already awarded, the trial Court granted interest at 9% per annum simple. Having regard to the facts and circumstances, the 2nd respondent/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.67,000/- 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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