

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.4900 of 2004

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JUDGMENT:

Having not been satisfied with the quantum of compensation awarded, the injured claimant had preferred this appeal assailing the award dated 01.09.2004 in OP.No.1211 of 1998 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum- District Judge, Nizamabad.

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 ('the second respondent' for brevity). This appeal against the 1st respondent/owner-cum-insured was dismissed for default. Even though the 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 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 on 08.12.1998 while travelling in a jeep had claimed a compensation of Rs.2,50,000/- for the injuries sustained and disability suffered on account of his involvement in the said accident. The owner-cum-insured (1st respondent) had filed written statement disputing the accident, injuries sustained by the claimant and his occupation and the income. The

2nd respondent/insurance company had resisted the claim by raising various contentions. During the course of trial before the Tribunal, the claimant and a Doctor were examined as PWs1 and 2. Exhibits A1 to A11, C1 and X1 were marked on the side of the claimant. On behalf of the 2nd respondent, no oral evidence was adduced. Exhibit B1-the Photostat copy of insurance policy was marked. The Tribunal having held that the pleaded accident had occurred resulting in injuries to the claimant on account of the rash and negligent driving of the tractor bearing registration no.AP 25/E-5532 by its driver had awarded a compensation of Rs.51,000/- payable with interest at 9% per annum simple from the date of petition till the date of realisation recoverable along with proportionate costs by the claimant from the insured and the insurance company. The claimant, not having been satisfied with the award, had filed this appeal for determination of just and fair compensation. It is stated that no appeal or cross objections are filed by the insurance company.”

4. (a) The learned counsel for the claimant would contend as follows: - ‘The Tribunal had awarded a meagre compensation in a case where the claimant sustained grievous injuries which resulted in permanent partial disability. The claimant filed the relevant medical record including exhibit C1-disability certificate and had also examined a Doctor. The Doctor deposed that he had seen the previous medical record of the claimant and had further deposed that the fractured bone has mal-united and that the claimant suffered permanent partial disability. The disability certificate was issued by the District Medical Board. The petitioner received inpatient treatment for a long time and had suffered enormous shock and pain and was unable to walk for a long time and was assisted by an attendant. He had underwent operations for the correction of fracture in the Government Hospital and later received treatment from private hospitals. He has to undergo one more operation in future for removal of the implants. He was a butcher and used to carry on business in Mutton/meat and used to earn Rs.6,000/- per month. He had lost his earnings and also earning capacity. The Tribunal had ignored the evidence adduced by the claimant and had wrongly determined the monthly income of the claimant at Rs.2,000/- and awarded paltry amounts of compensation under various heads without properly appreciating the facts and the evidence adduced on record. 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 2nd respondent would contend as follows: 'The Tribunal had awarded a compensation of Rs.51,000/- in all and that the Doctor who was examined as PW2 is not a credible witness and he was in the habit of issuing medical certificates and giving evidence by exaggerating the facts only to support the claimants in various cases and he is a stock witness for the claimants in the District of Nizamabad and neighbouring districts and that his evidence cannot be looked into as he is not a reliable witness. No evidence was produced from the local body to show that the claimant is a businessman in mutton and that he was earning Rs.6,000/- per month. The medical bills and prescriptions were not proved. In the absence of any documentary evidence and credible evidence as regards the occupation, income and permanent disability, if any, sustained by the claimant, the Tribunal had rightly determined the compensation based on the available evidence after having properly appreciated the evidence. The compensation awarded cannot be said to be not reasonable, just and fair. The claimant is not entitled to any enhanced compensation. 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 claimant is this: - 'He had suffered the injuries viz., fracture of right leg at two places, fracture of right foot, fracture of back bone besides injuries to left leg, right side of body and other injuries. He was admitted in Government Hospital, Nizamabad and was treated by Dr.L.Ramulu and Dr.T.Narsinga Rao, Orthopaedic surgeons. He underwent an operation and the fracture of the bone of the right leg was corrected by fixing an implant. Thereafter he had received treatment in a private hospital. He had incurred an expenditure of more than Rs.1 lakh as on the date of the filing of the claim petition. On account of the injuries sustained in the accident he is unable to move

from his bed. He cannot walk and work. He had suffered loss of earning capacity. His future life has become dark and miserable; and, on account of the permanent/partial disability, he is depending upon others. He is required to undergo operations in future and therefore, he is entitled to a compensation of Rs.2,50,000/-.'

6. (b) On the other hand, the case of the 2nd respondent on this relevant aspect is in the nature of general and specific denial and the 2nd respondent had put the claimant to strict proof of the averments in the claim petition and his entitlement to the amount claimed in the petition.

6. (c) PW1 while deposing in line with his pleadings has stated as follows: - 'I received injuries on left shoulder and right leg. I suffered fracture injury to the bones of right leg at two places besides fracture of bone/s of left shoulder. I received injuries on left leg, head and back. I was shifted to Government Hospital, Nizamabad. I received inpatient treatment for one month. I underwent operations. A rod was inserted in my left leg. Subsequently, I received treatment from a private hospital for two months. Dr.Ramulu also performed an operation. I had incurred an expenditure of Rs.1,50,000/- on my treatment. I am still taking treatment. Prior to the accident, I was hale and healthy and I used to run a mutton shop being a butcher by profession and earn Rs.10,000/- per month. After the accident I am unable to do my business. I am unable to walk. I lost my earning capacity. I am unable to do my mutton business. I am still getting pains.' He had exhibited the certified copy of wound certificate, discharge ticket, prescription issued by Dr.Ramulu, bunch of 14 medical bills and two X-ray films as exhibits A4 to A7, A9 and A11. His disability certificate and case sheet were exhibited as exhibit C1 and X1 respectively. In his cross examination, the following points were elicited. 'I have not filed any documentary evidence to prove my income and loss of earnings. I have not filed any radiologist's report corresponding to exhibit A11-X-ray.' He had denied the following suggestions. "It is not true to say that I was not running mutton shop and was not earning Rs.10,000/- per month. It is not true to say that I was treated conservatively in the Government Hospital, and that thereafter I did not take treatment in any private hospital. It is not true to say that I did not incur any expenditure. It is not true to say that I did not undergo any operation in any private hospital. It is not true to say that there is no disability and that I am attending to my works as usual. It is not true to say that exhibit A11/X-ray does not belong to me and that the same is created.'

PW2-Dr.Ramulu had deposed that on 10.11.2000 he had examined the claimant and had verified his previous medical records and found a mal united fracture-calcaneum right and mal-united medial malleolus right and that PW1 is having pain and restricted movements of right ankle. He had further deposed that he had assessed the permanent partial disability at 50% and that he had issued exhibit C1-disability certificate. He had further testified that he had treated the claimant-PW1 at Government Hospital and that he had performed an operation and that the fracture was corrected by screw fixation. According to him, PW1 cannot walk properly; and while walking he has to take the support of a stick; he requires further operation for removal of the screws; and, PW1 cannot do hard work. He had admitted that exhibit A4-wound certificate was issued by another Doctor of the Government Hospital and that the said certificate does not show any injuries to calcaneum right and medial malleolus right. When it was suggested to him that PW1 was perfectly alright and had not suffered any disability like restricted and painful movements, he had denied the said suggestion. When it is further suggested to him that he has issued exhibit C1-disability certificate without examining PW1 and that he had shown the disability on the higher side he had denied the said suggestion. When it was further suggested to him that the fractured bones of PW1 are united after the treatment received by him at the Government Hospital only, he had denied the said suggestion also.

6. (d) Thus, I have carefully examined the evidence brought on record. The medical record namely exhibit A4-wound certificate on a perusal would show that the claimant had sustained a laceration over right foot, which is certified as simple in nature, besides two grievous injuries namely fracture left calcaneum and fracture left malleolus. Exhibit A5-outpatient ticket would show the above said two fracture injuries were corrected by open reduction and internal fixation with screws and that the date of admission is 08.12.1998 and the date of discharge is 28.12.1998 and that follow up treatment was given in the outpatient department of the Government Hospital. Exhibit X1-case record of the claimant would show that the claimant suffered the aforementioned fractures of bones of left leg and that an operation was performed and that he received inpatient treatment from 08.12.1998 to 28.12.1998. Therefore, the evidence on record is sufficient to safely conclude that PW1 had sustained two major fractures and one simple laceration in the pleaded 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, 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 compensation of Rs.60,000/- 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 and had received inpatient treatment in the Government Hospital for about twenty two days and later his case was followed up in the outpatient department. According to his evidence, he had spent Rs.1,50,000/- on his treatment as on the date of filing of the petition and that he is still taking treatment and that he has to undergo one more operation for removal of the implants. He had exhibited a bunch of prescriptions under exhibit A6, which were all issued by PW2-Dr.Ramulu. He had also exhibited bunch of medical bills under exhibit A7 for a total sum of Rs.3,723.40 ps. He did not examine any person connected with the said documents. It is common knowledge that even patients receiving treatment in Government Hospital also incur expenditure on transport, extra nourishment, medicines purchased from outside, attendant, besides other incidental charges. During the period of hospitalisation and bed rest, a person might have attended upon the claimant 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.50,000/- is awardable as compensation under the heads 'hospital, medical, extra nourishment, attendant's, transport and incidental charges including future medical expenses for future operations for removal of screws.

6. (f) As regards the claim under the head 'loss of earnings (past)', according to the

claimant he used to do business in mutton and earn Rs.10,000/- per month. However, no evidence like his licence for doing business issued by the local authority is produced. He was aged 35 years at the time of accident in the year 1998. The Tribunal had taken his income as Rs.2,000/- per month, considering the fact that he is an able-bodied, hale and healthy person capable of doing any work including hard labour. Having regard to the injuries and evidence on record, it is reasonable to accept that he was out of work for at least six months. Therefore, Rs.12,000/- is awarded as compensation under the head 'loss of earnings (past)'.

6. (g) Coming to the loss of earnings (present and future), the case of the claimant as brought out on record is that after the accident he is unable to walk and carry on his mutton business and that he is still getting pains and that he had lost his earning capacity. He had exhibited exhibit

C1- disability certificate issued by PW2-Civil Assistant Surgeon, District Head quarter hospital, Nizamabad wherein the percentage of disability was certified at 50%. In **Sannala Bhaskar Reddy v. M.Sreenivasulu and another** this Court considered the question - Whether the disability of the injured can be determined on the basis of a certificate issued by a Doctor who did not treat the injured immediately after the accident. In the cited case, exhibit A5 was the disability certificate and PW1 was the author of the said certificate. This Court held that the certificate will not have any evidentiary value in view of the ratio in the decision of the Supreme Court in **Rajesh Kumar v. Yudhvir Singh's** case. Ultimately, this court held in that case that the disability may be taken at 25% though the disability was assessed and certified in the certificate at 60%. In the case on hand, PW2 supported the case of PW1 in his evidence. His evidence, which is relevant, is already adverted to supra. Though the learned counsel for the insurer had contended that the said Doctor is not a credible witness and is a stock witness for claimants in motor accident claims in that locality, no suggestions on that line were given to the Doctor when he was cross examined on behalf of the insurer. When it was suggested to him that he had certified the percentage of the disability on higher side, he had denied the said suggestion. Admittedly, the disability was certified with reference to left lower limb which can be taken as 1/6th of the total body of the claimant. It is to be noted that the Doctor had certified the extent of permanent disability at 50% but did not state that either there was shortening of the limb or deformity of any kind. He had only stated that PW1 cannot walk properly and that he needs support of a stick and he cannot do hard

work. He did not state that PW1 cannot attend to his mutton business. Therefore, that disability is not going to have a serious and total impact on the earning capacity of the claimant and may not come in the way of his making a living by continuing his mutton business as in the past. However, the contention of the claimant that the claimant who had suffered some extent of disability cannot work as in the past and that the disability suffered will have an impact on his functional capacity can be accepted. Hence, the functional disability is determined at 20%. Now, the compensation under the relevant head is to be arrived at. The age of the claimant at the time of accident is 33 years as per medical record. Therefore, the appropriate multiplier as per the ratio in **Sarala Verma v. Delhi Transport Corporation** is ‘16’ (sixteen). The monthly income of the claimant was already determined at Rs.2,000/-. Since the claimant is aged below 40 years, an addition of 50% to the actual income of the claimant towards future prospects is to be made. Therefore, the monthly income of the claimant works out to Rs.3,000/-. Accordingly, the annual income of the claimant works out to Rs.36,000/- (12 x Rs.3,000/-). The compensation awardable in case of 100% functional disability would be Rs.36,000/- x 16 = Rs.5,76,000/-. Since the functional disability is determined at 20%, the said sum, if scaled down comes to Rs.1,15,200/-. The said sum is rounded off to Rs.1,15,000/- and is accordingly awarded under the head ‘loss of earnings (present and future)’.

6. (h) Coming to the claims under the group of heads ‘loss of prospects of life, loss of amenities of life, loss of enjoyment of life, loss of opportunities of life (economical, political and social), loss of pleasures of life, loss of expectation of life and social disability’ and other group of heads, this Court had already discussed the evidence in detail and had determined the functional disability of the claimant at 20%. Having regard to the facts, the evidence adverted to and the findings recorded supra, in the well considered view of this court, it is reasonable to award Rs.13,000/- as compensation under the aforementioned group of heads. The said sum is accordingly awarded.

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

Sl.No.	Head of compensation	Amount (in Rs.)
(1)	Injury, shock pain and suffering	60,000-00
(2)	Hospital, medical, extra nourishment, attendant’s, transport and incidental charges including future medical expenditure	50,000-00
(3)	Loss of earnings(past)	12,000-00

(4)	Loss of earnings(present and future)	1,15,000-00
(3)	loss of prospects of life, loss of amenities of life, loss of enjoyment of life, loss of opportunities of life (economical, political and social), loss of pleasures of life, loss of expectation of life and social disability	13,000-00
Total		2,50,000-00

(Rupees Two Lakhs Fifty Thousand only)

6. (i) 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.2,50,000/-. 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.

8. In the result, the appeal is allowed with costs awarding a total compensation of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only). On the compensation already awarded, the trial Court had granted interest at 9% per annum simple. 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.1,99,000/- [Rupees One Lakh Ninety Nine Thousand 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.

M. SEETHARAMA MURTI, J

20th March, 2015

Vjl

