

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.4904 of 2004

-

JUDGMENT:

This appeal under Section 173 of the Motor Vehicles Act, 1988 by the injured claimant is directed against the award dated 31.08.2004 of the learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Kadapa, in M.V.O.P.No.1207 of 2001.

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 this 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: -

On 25.05.2001 at about 4 PM, when the claimant along with his brother was standing in front of the house of one Ademma, one Tata Sumo bearing Registration No.KA 34/M 887 belonging to the 1st respondent and insured with the 2nd

respondent came at a high speed being driven by its driver in a rash and negligent manner and dashed the claimant. As a result, the claimant had sustained crush injuries on his feet besides other injuries. His left toe was lost. He had sustained injury on the right foot from ankle joint to the toes and had suffered fracture of bone of big toe besides injuries to other toes. He was immediately shifted to the Government Hospital, Rayachoty and from there to SVIMS, Tirupati and had received inpatient treatment. Later, he received treatment from Dr.Venkata Subbaiah. In spite of prolonged treatment, the injuries did not heal till the date of filing of the petition. He is unable to walk freely. He is a healthy and brilliant boy aged three years as on the date of the accident. His future prospects including prospects of marriage are spoiled. His parents had spent more than Rs.25,000/- on medical expenses. He requires another sum of Rs.25,000/- to meet the future medical expenses. Therefore, the claim petition is filed to award a compensation of Rs.2,00,000/- to the claimant, who is a minor being represented by his father and natural guardian. The 1st respondent/owner of the vehicle had remained *ex parte* before the Tribunal. The 2nd respondent/insurance company had filed a counter resisting the claim on various grounds. During the course of trial, before the tribunal, the father of the claimant was examined as PW1 and exhibits A1 to A7 were marked. The officer of the insurance company was examined as RW1 and exhibit B1 was marked. On merits, the Tribunal, while holding that the pleaded accident had occurred resulting in injuries to the claimant on account of the rash and negligent driving of the driver of the TATA SUMO of the 1st respondent, had awarded a compensation of Rs.35,000/- payable with interest at 9% per annum from the date of the petition till the date of payment or realization besides proportionate costs and had also held that both the respondents are jointly and severally liable to pay the same to the claimant and had accordingly directed them to deposit the compensation within one month from the date of the passing of the award. Having not been satisfied with the amount 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 awarded a meagre compensation in a case where the minor claimant sustained grievous injuries which resulted in permanent partial disability. The claimant's wound certificate-exhibit A2 showing the grievous/ crush injuries sustained by the minor claimant and his disability certificate-exhibit A7 issued by the Medical Board,

Kadapa were filed apart from medical bills and other documents. The claimant 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. Having suffered permanent disability, he lost his future prospects including prospects of marriage. The Tribunal ought to have taken into consideration his notional income and ought to have awarded compensation under the head 'loss of earnings' and also 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'. Without properly appreciating the facts and evidence, a meagre compensation was awarded. Compensation was not awarded under all the heads of compensation and therefore, the order awarding a bare minimum compensation is unjust. Therefore, the appeal may be allowed and just compensation may be awarded.'

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.35,000/- in all. The claimant is an young boy of three years of age and is not an earning member. Injuries, in case of children take less time for healing and after healing of the injuries, generally no disability would occur. In the case on hand, no doctor was examined and there is no credible evidence to show that the claimant suffered any disability much less permanent disability. The claimant had received treatment in Government Hospital. The injuries completely healed. The medical bills and prescriptions were not proved. In the absence of any documentary evidence and credible evidence as regards the alleged 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 unreasonable. 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) The case of the claimant as regards injuries and other allied aspects is this: 'The claimant had sustained crush injuries on his feet besides other injuries. His left toe was lost. He had sustained injury on the right foot from ankle joint to the toes and had suffered fracture of bone of great toe besides injuries to other toes. He was immediately shifted to the Government Hospital, Rayachoty and from there to SVIMS, Tirupati and had received inpatient treatment. Later, he had received treatment from Dr.Venkata Subbaiah. In spite of prolonged treatment, the injuries did not heal till the date of filing of the petition. He is unable to walk freely.'

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 his entitlement to the compensation as claimed.

6. (c) The father of the minor claimant, who was examined as PW1, while testifying in line with the pleaded case had also deposed as follows: 'His son was taking treatment even as on the date of his deposition on 23rd March 2004. After the accident, his son became very dull and is unable to concentrate on any work and had lost future prospects like prospects of education, employment and marriage. His Son had also lost his earning capacity.' In his evidence, exhibit A4, outpatient chit issued by Government Hospital, Kadapa, exhibit A5, bunch of fifteen medical bills for Rs.3,197/-, exhibit A6, a bunch of three transport (jeep) bills for Rs.3,000/- and exhibit A7, disability certificate issued by the District Medical Board, Kadapa were exhibited. In his cross-examination, he had admitted that he did not file any documents to show that his son received inpatient treatment for one month in a hospital at Tirupathi. However, he had asserted that he took his son four times in a jeep to Tirupati and that jeep belongs to Harinath Reddy of Sundupalli. He had denied the suggestion that the transport bills under exhibit A6 were fabricated for the purpose of the claim. He had also stated that he went with his son to Tirupati once in a week but he has not filed any hospital record to show that his son was treated in

SVRR Hospital, Tirupati. He had also denied the suggestions that bills under exhibit A5 were concocted for the purpose of the claim and that the injuries sustained by his son had completely healed and that his son did not sustain any permanent disability. RW1, an officer of the 2nd respondent company, did not speak on the aspects, which are relevant for present consideration, as he was examined only to speak about the liability aspects.

6. (d) I have thus carefully gone through the evidence. The wound certificate exhibit A2 on a perusal would clearly show that the claimant had sustained a crush (bleeding) injury over right foot anteriorly, lacerated wound over dorsum of the right foot extending from the ankle joint to the toes (7 cm x 5 cm x bone deep) and injury to right great toe exposing the bone (3 cm x 2 cm x bone deep). The X ray taken revealed fracture of lower end of tibia. The fracture injury was certified as grievous in nature. The exhibit A7-disability certificate issued by the District Medical Board would show that the claimant had suffered post traumatic amputation of right great toe and that there is a depressed scar on the dorsum of right foot with varus foot and with deformity of 2nd toe of right foot. The percentage of disability was determined at 25%. The disability certificate issued by the Medical Board requires no further proof, in the well considered view of this court. Thus, the claimant at a very young age suffered a serious injury to his right foot and his right great toe was lost and he had also suffered varus foot and his foot is, therefore, in deformed condition. 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 sum of Rs.50,000/- is awardable as compensation under the heads 'injury', 'shock', 'pain' and 'suffering' and the same is accordingly awarded.

6. (e) The contention, as regards the claim under the heads 'hospital, medical,

transport, attendant, extra nourishment and other incidental expenses' is that the claimant had received inpatient treatment and outpatient treatment for a considerable length of time can be accepted considering the nature of injuries sustained by the claimant. His father deposed that he had spent more than Rs.25,000/- and that Rs.25,000/- was required towards future medical expenditure as on the date of his evidence in March, 2004. The father of the claimant had filed some bills for Rs.3,000/- and odd and transport bills for Rs.3,000/- and had deposed that he took his son once in a week to a hospital at Tirupati and he had incurred transport expenses as well. 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. When an young boy was in the hospital and was confined to bed in the house on account of the serious injuries, it is reasonable to accept that one of his family members had attended upon him till he was able to walk on his own. In the facts and circumstances of the case, a sum of Rs.25,000/- is awardable as compensation under the heads 'hospital, medical, extra nourishment, attendant's, transport and incidental charges' excluding future medical expenses. The said sum is accordingly awarded.

6 .(f) As regards the claim under 'loss of earnings (past and present)', no compensation is awardable as the claimant was a minor and non-earning member.

6. (g) Coming to the 'loss of earnings (future)', the case of the claimant as brought out on record is that after the accident he is unable to walk and that the claimant is dull and is not able to concentrate on any work and that he had lost his future prospects of education and marriage and that he had lost his earning capacity. Since he is a minor and a non-earning member, the compensation, if any, to be awarded under this head has to be determined basing on some guidance and hypothesis. The Medical Board assessed the percentage of permanent disability at

25%. The same can be accepted as functional disability having regard to the age and the facts and circumstances of the case. In **Kumari Kiran (through her father Harinarayan) v. Sajjan Singh** while considering an issue in regard to award of compensation towards future loss of income due to permanent disability suffered by the appellants/minors, the Supreme Court had referred to the decision in *Mallikarjun v. National Insurance Company Limited* (AIR 2014 SC 736) wherein it was held as follows:

“7. It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Ors.* [(1995) 1 SCC 551], while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come.

8. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs. 15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

“12. Though, it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick...”

Having considered the ratio supra, the Supreme Court had further held in the cited case (3rd supra) as follows:

“The Tribunal has calculated the future loss of income by taking the notional income of each of the appellant-minors as Rs.15,000/- per annum. We are of the considered view that a child’s notional income cannot be ascertained as per the figure given for a non-earning individuals in the second schedule of the Motor Vehicles Act, 1988. As the Tribunal and the High Court have not followed the principles laid down by this Court in the above case by awarding loss of future income due to permanent disability, therefore, we set aside the same. Further, reiterating the same principles as held in Mallikarjun case, we award Rs.1,00,000/- each towards shock, pain and suffering (non-pecuniary head) in place of loss of future income due to permanent disability.

Hence, this Court in accordance with the principles laid down by this Court in the above case (supra), and after examining the facts, evidence on record and circumstances of the case on hand, we deem it fit and proper to award Rs.3,00,000/- towards permanent disability of the appellant-minors viz. Kumari Kiran and Master Sachin, since they have suffered 30% and 20% permanent disability respectively, due to the shortening of their right legs by one inch after the injuries sustained in the motor accident. Further, upon considering the age of appellant-minors, they have a long journey ahead of them in their lives, during which they along with their parents will have to endure an immeasurable amount of agony and uncertain medical expenses due to this motor-vehicle accident. Thus, based on the principles laid down in the above case, we award Rs.25,000/- each towards agony to parents and Rs.25,000/- each towards future medical expenses.”

Since Rs.50,000/- is already awarded under the heads ‘shock, pain and suffering’, an additional sum of Rs.1,00,000/- is also awarded following the ratio of the Hon’ble Supreme Court in place of loss of future income due to permanent disability. The said sum is awarded as the injury is only to foot which is only a part of one lower limb, which is $\frac{1}{6}^{\text{th}}$ of the body. Further, following the ratio in the decision, Rs.25,000/- each is awarded towards agony to parents and future medical expenses.

6. (h) Coming to the claims under the group of heads ‘loss of prospects of life (education, marriage and employment), 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, what is to be reiterated and noted is that the District Medical Board had certified the extent of permanent disability at 25% after noting the loss of right great toe due to traumatic amputation, the condition of varus foot and the deformity of the 2nd right toe and the over all condition of the right foot of the claimant. Therefore, in the well considered view of this court, the claimant is entitled to Rs.75,000/- as compensation under the aforementioned group of heads.

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

Sl.No.	Head of compensation	Amount(in Rs.)
(1)	Injury, shock, pain and suffering	50,000-00
(2)	Hospital, medical, extra nourishment, (special diet and nutrition), attendant's, transport and incidental charges excluding future medical expenditure	25,000-00
(3)	Loss of Future income due to permanent disability	1,00,000-00
(4)	Future Medical expenses	25,000-00
(5)	Towards agony to parents	25,000-00
(6)	'loss of prospects of life (education, marriage and employment), 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'	75,000-00
Total		3,00,000-00

(Rupees Three Lakhs 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.3,00,000/-. The compensation is accordingly awarded. The points are accordingly answered.

7. Before going to the next aspect, it is necessary to mention that the claimant had claimed a compensation of Rs.2,00,000/-. However, this court awarded a compensation of Rs.3,00,000/-, which is more than the amount claimed. The said compensation is awarded as the court should award proper and just compensation irrespective of the claim and, if required, even in excess of the claim, in view of the settled legal position laid down in the decision in **Rajesh vs. Rajbir Singh**. Further, in the case of **Nagappa v. Gurudayal Singh** the Hon'ble Supreme Court had held that it cannot be held that there is a bar for the claims tribunal to award compensation in excess of what is claimed, particularly, when the evidence which is brought on record is sufficient to pass such an award.

8. 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.

9. In the result, the appeal is allowed, with costs awarding a total compensation of

Rs.3,00,000/- (Rupees Three Lakhs only). On the compensation already awarded, the trial Court granted interest at 9% per annum simple. Having regard to the facts and circumstances, the insurance company is directed to deposit the enhanced portion of compensation i.e., Rs.2,65,000/- (Rupees Two Lakhs Sixty Five thousand only) with interest at 7.5% per annum simple from the date of the original petition till the date of deposit and also proportionate costs 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 deposited accordingly. The age of the claimant was three years in the year 2001, when the claim petition was filed. He would be attaining majority in a short time from now. Hence, for the present, his father and natural guardian is permitted to withdraw Rs.75,000/- from out of the total compensation. On attaining majority and on getting himself declared as major, as per the procedure, the claimant is permitted to withdraw another Rs.75,000/- from out of the balance compensation in deposit. He is permitted to withdraw the entire balance compensation with interest and costs at the time of pursuing higher education or marriage by producing required proof to the satisfaction of the Tribunal. The court fee due and payable including the deficit court fee shall be paid before withdrawing the amount mentioned supra by the father of the claimant.

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

M. SEETHARAMA MURTI, J

20th March, 2015

RAR