

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL MISCELLANEOUS APPEAL No.2741 OF 2004

JUDGMENT:

This is an appeal by the injured-claimant under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 18.07.2002 in M.V.O.P.No.171 of 2001 passed by the learned I Additional District Judge-cum- Chairman, Motor Accident Claims Tribunal, Kurnool.

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 ('2nd 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 facts leading to filing of the present appeal by the claimant may be stated, in brief, as follows: -

On 30.04.1988 the claimant and others were taking a dead body of one Bhaskar Badutu Patel from Srisailam Project to the native place of the said deceased at

Orissa. On the way, their vehicle, which belonged to the 1st respondent, had met with an accident due to rash and negligent driving of the driver. On account of that vehicle dashing against a lorry stationed on the left side of the road, the claimant had sustained injuries all over his body. Hence, the claimant had filed the claim petition claiming a compensation of Rs.2,00,000/-; but, had restricted his claim to Rs.1,00,000/-. The 1st respondent-cum-insured had remained *ex parte* before the Tribunal. The 2nd respondent-Insurance Company resisted the claim on various grounds. This claimant's petition and another claim petition in M.V.O.P.No.244 of 2001 of another injured-claimant were tried jointly by the Tribunal. Before the Tribunal, this claimant and the Doctor, who had treated him, were examined as PWs.1 and 2 and the other claimant was examined as PW3. Exhibits A1 to A9 were marked. No oral and documentary evidence was adduced on the side of the 2nd respondent. 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 jeep bearing No. AP 21 U 5684, had awarded a compensation of Rs.31,000/- payable with interest at 9% simple from the date of petition till the date of realisation, besides proportionate costs and had further, held that both the respondents (insured and insurer) are jointly and severally liable to pay the said compensation to the claimant. 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/ insurance Company.

4. (a) The learned counsel for the appellant/claimant would contend as follows:

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The Tribunal had not properly appreciated the facts, the evidence and the law applicable. The Tribunal had awarded a meagre compensation; adequate compensation was not awarded under the head of 'loss of earnings'. The evidence of the Doctor-PW2 would clearly show that the claimant had suffered grievous injuries at an young age of 23 years and that the said injuries had resulted in permanent disability and that therefore, the bright future prospects of the claimant were affected. The claimant had lost future income and also his earning capacity. The Tribunal ought to have seen that the claimant's future prospects including career progression were badly affected on account of the

permanent disability suffered by him. Adequate compensation was also not awarded under the heads 'pain and suffering', 'Medical Expenses' and 'loss of amenities of life'. Therefore, the appeal may be allowed and just compensation may be awarded.

4. (b) On the other hand, learned counsel for the 2nd respondent-Insurance Company would contend as follows:

The Tribunal having considered the facts accurately and the evidence in proper perspective had rightly determined the compensation amount of Rs.31,000/-. In fact, the Insurance Company should not have been fastened with any liability in the facts and circumstances of the case. However, the Insurance Company has not preferred any appeal or cross objections. Further, the Tribunal recorded a finding that the claimant is attending to his duties as a driver and therefore, the Tribunal held that the claimant is not entitled to any compensation under the head 'loss of earnings'. The Tribunal having held that there is no permanent disability or functional disability or loss of earning capacity, erred in awarding a compensation of Rs.12,500/- towards 'physical and medical disability'. No evidence was adduced to prove the documents and medical expenses. The claimant had restricted his claim voluntarily to Rs.1,00,000/-. Therefore, in any view of the matter, he is not entitled to claim any compensation exceeding Rs.1,00,000/-. None of the contentions are based on facts and evidence and the appeal is devoid of merit. The compensation awarded cannot be said to be not just, reasonable and fair. Hence the appeal may 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 claimant's case as regards injuries and other allied aspects is this:

"In the pleaded accident, the claimant had suffered fracture injuries to the bones of right hand and both legs besides injuries all over his body. He was immediately shifted to Government Hospital, Bommuru. Later he was referred to the Government General Hospital, Kurnool, wherein he was treated as an in-patient. Two operations were performed on his legs for correction of the fractures of the bones. He is not able to walk properly. He is unable to attend his daily works. He had suffered permanent disability. He had spent Rs.20,000/- on his treatment, medicines, extra nourishment and other charges. He was aged 23 years and was hale and was healthy prior to the accident and was working as a driver in Srisailam Project and was earning Rs.50/- per day; and, he used to contribute the total amount to his family."

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

6. (c) The claimant, who was examined as PW1, while deposing in line with his pleadings, had testified that in the accident he had sustained grievous injuries and that he was shifted to Government Hospital, Rajahmundry and that he was treated as in-patient for three days in the said Hospital and that on his return to Kurnool, he had received in-patient treatment in Government General Hospital, Kurnool from 04.05.1998 to 30.05.1998 and that a surgery was performed and that the fracture was corrected by fixing implants and that he had incurred an expenditure of Rs.20,000/- on medical and hospital charges. He had exhibited exhibit A2, the copy of his wound certificate, exhibit A4, the Out-Patient chit, exhibit A5, a bunch of medical bills for Rs.11,351/- and also exhibit A.6, the driving licence. In his cross-examination, he had denied the suggestion that the bills under exhibit A5 are fabricated and that he had not sustained any permanent disability. PW2, the doctor, deposed that he had treated PW1 on 04.04.2002 in his private clinic and that on his advice, X-ray of right thigh was taken and that the examination of the said X-ray revealed that I.M. nail was in

position and that there is a mal-union of the fracture of shaft of femur and there is also half inch shortening of the right leg. This doctor further testified that PW1 requires one more operation for the removal of the I.M. nail and that there is restriction of movements of the right hip joint. This Doctor assessed the extent of permanent disability at 20%. In his cross-examination, he had stated that one inch shortening of the limb is equivalent to 10% disability. He had denied the suggestion that PW1 did not suffer any permanent disability and that he had certified the disability on the higher side.

6. (d) I have carefully gone through the evidence. A perusal of exhibit A2 Wound Certificate would show that PW1 had sustained a contusion on right thigh and fracture of femur besides one abrasion and that X-ray right hip and thigh revealed fracture of right femur in upper half. The doctor had certified the said fracture injury as grievous in nature. Thus, the evidence on record would show that PW1 had sustained one major fracture and underwent an operation and that the said fracture was corrected by fixing an implant. Even simple injuries cause painful experience to the victim and take a minimum of 2 or 3 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.35,000/- 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 for three days at a hospital at Bommuru of Rajahmundry and that later, he had received inpatient treatment from 04.05.1998 to 30.05.1998 at Government Hospital, Kurnool and that he

underwent an operation and that he had spent an amount of Rs.20,000/- on hospital and medical charges. However, he had filed exhibit A5 bills for Rs.11,351/-. And, he did not examine any person connected with the said documents to prove the medical expenditure. It is common knowledge that even the patients receiving treatment in Government Hospital also incur expenditure on transport, extra nourishment, medicines purchased from outside, attendant, besides other incidental charges. Since the claimant had sustained fracture of a bone of a leg, a person might have attended upon the claimant during the period of hospitalisation and bed rest 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.25,000/- is awarded as compensation under the heads “hospital, medical, transport, attendant, extra nourishment and other incidental expenses” including future medical expenses for removal of the implant.

6. (f) As regards the claim under ‘loss of earnings (past)’, the case of the claimant is that he used to work as a Driver in Srisailam Project and earn Rs.50/- per day. However, he had testified that he used to earn Rs.80/- per day as a Driver. Evidence contrary to the pleading cannot be accepted. Therefore, his daily income is determined as Rs.50/- per day. His monthly income is therefore, determined at Rs.1,500/- (30 x 50) per month. Considering the nature of the injuries, it is reasonable to accept that he is out of work for six months. Accordingly, Rs.9,000/- (Rs.1,500 x 6 months) is awarded under the head of ‘loss of earnings (past)’.

6. (g) Coming to the loss of earnings (present and future), PW1, according to his evidence, was working as a Driver on daily wage basis in Srisailam Project. He had also produced his driving licence exhibit A6, which is not cancelled. He did not produce any evidence from his employer to show that he was removed from services after the accident. He did not even state in his evidence that after the accident, he had discontinued his services as a Driver or that he was removed from his employment. The Doctor also testified that there is only

shortening of his right lower limb by half an inch and had certified the percentage of disability at 20%. The Doctor also did not state that the restrictions of right hip joint movements are going to affect his ability to drive a vehicle. Viewed thus, this Court finds that the disability certified at 20% did not affect the functional capacity/earning capacity of the claimant. Therefore, no compensation is awardable 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 (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 noted is that PW1 had suffered permanent disability viz., half an inch shortening of one lower limb and the fracture had also resulted in restriction of movements of right hip. He was aged 23 years at the time of accident and his profession is driving. Therefore, considering the facts and circumstances of the case, a sum of Rs.13,000/- is awarded 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	35,000-00
(2)	Hospital, medical, transport, attendant’s, and other incidental charges including future medical expenditure	25,000-00
(3)	Loss of earnings (past)	9,000-00
(4)	‘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.	13,000-00
Total		82,000-00

(Rupees Eight Two Thousand Two Hundred 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.82,000/-. The compensation is accordingly awarded. The rest of the claim is disallowed. The point is 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 trial Court granted interest at 9% per annum simple.

8. In the result, the appeal is allowed in part, with proportionate costs awarding a total compensation of Rs.82,000/- (Rupees Eighty Two 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.51,000/- (Rupees Fifty One 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, may also be paid or deposited accordingly. On such deposit, the claimant is permitted to withdraw the same without furnishing any security.

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

JUSTICE M.SEETHARAMA MURTI

Date:27.03.2015

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