

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

M.A.C.M.A.No.2953 of 2008

JUDGMENT:

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Challenging the award and decree dated 02.02.2007 passed in O.P.No.490 of 2003 on the file of the Motor Accidents Claims Tribunal (District Judge), Mahaboobnagar, the New India Assurance Company Limited (hereinafter referred to as "insurance company"), preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act").

For the sake of convenience, the parties will hereinafter be referred to as arrayed in O.P.

The facts in issue are as under:

The petitioner herein filed a petition under Section 163-A of the Motor Vehicles Act, claiming compensation of Rs.2,50,000/- for the injuries sustained by him in a road accident that occurred on 03.09.2002. It is stated that on that day at about 5.30 p.m. the petitioner along with one Kapu Rajasekhar were proceeding on a Hero Honda Motor Cycle bearing No. AHY 9877 to go to Wanaparthi. When they reached near Gumpu Guttu Road, one Matador Van bearing No. AP 22 T 3361 driven by its driver in a rash and negligent manner came and dashed the motor cycle. As a result of which, the petitioner and Kapu Rajasekhar sustained injuries. Since the accident took place due to rash and negligent driving of the driver of the first respondent, the second respondent is the insurer of the Van, the claim petition was filed making both the respondents jointly and severally liable to pay compensation.

In spite of giving sufficient opportunity, respondent No.1 failed to file counter, hence his right to file counter was forfeited.

The second respondent filed counter denying the manner in which the accident took place and also the age, income and avocation of the claimant. It is specifically stated that there was no rash and negligence on the part of the rider of the motor cycle as he was in a drunken condition. Hence, it is contended that the insurance company is not liable to pay any compensation.

Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of Matador Van bearing No. AP 22 T 3361?
2. Whether the petitioner is entitled to claim compensation from the respondents, and if so to what amount and against whom?
3. To what relief?

In support of his plea, the petitioner examined PWs.1 and 2 and also got marked Exs.A1 to A8. On behalf of the respondents, no oral evidence has been produced but Ex.B1 and Exs.D1 and D2 were marked.

After analyzing the oral and documentary evidence available on record, the Tribunal held that the accident took place due to the rash and negligent driving by the driver of the Matador Van and accordingly awarded a sum of Rs.1,99,000/- as compensation with interest at 7.5% p.a. from the date of petition till the date of realization for the injuries sustained by the claimant. Challenging the same the insurance company filed the present appeal.

The learned counsel for the appellant/insurance company mainly submits that there is any amount of doubt with regard to the manner in which the accident took place. According to him, the rider of the motor cycle was drunk at the time of accident and there was contributory negligence on the part of the rider of the motor cycle. He also submits that the Tribunal erred in awarding Rs.1,66,000/- towards loss of earnings on account of permanent disability by considering the evidence of PW.2 though he is not a member of medical board for assessing the disability at 40%. In any event he submits that the compensation awarded to the petitioner is on a higher side.

Per contra, the learned counsel for the petitioner would submit that no oral or documentary evidence was adduced by the insurance company to prove that there was negligence on the part of the rider of the motor cycle.

As stated earlier the main ground urged by the learned counsel for the insurance company is with regard to the manner in which the accident took place. As seen from the record, the accident took place on 03.09.2002 at about 5.30 p.m. on Gumpu Guttu Road. On that day the petitioner and one K.Rajasekhar were proceeding on motor cycle towards extreme left side of the

road and when they reached near Gumpu Guttu road, one Matador Van bearing No. AP 22 T 3361 came in opposite direction, driven by its driver in a rash and negligent manner and dashed the motor cycle. As a result of which, the petitioner and K.Rajasekhar sustained injuries. PW.1 in his evidence deposed about the manner in which the accident took place. He categorically stated that the accident occurred only due to rash and negligent driving of the driver of the Van and the same is reflected in Ex.A1 a copy of the First Information Report. The evidence of PW.1 also gets corroboration from the contents of the charge sheet (Ex.A2) filed by the police against the driver of the Van.

It is to be seen that the insurance company has not adduced any oral evidence to prove that there was contributory negligence on the part of the rider of the motor cycle and that he was drunken state at the time of the accident. Even the driver of the van who was present at the time of accident was not examined to prove negligence on the part of the rider of motor cycle. In the absence of any contra evidence, it cannot be said that there was contributory negligence on the part of the rider of the motor cycle. Hence, the argument of the learned counsel for the appellant herein cannot be accepted.

The next question that arises for consideration is *whether the compensation awarded to the petitioner is just and reasonable?*

In order to award compensation in case of personal injuries the Apex Court in ***Raj Kumar Vs. Ajay Kumar and another*** held as under:

5. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability. (iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the petitioner and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(b).

In the light of the principles laid down in the aforementioned cases, determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment but also for the loss of earning, inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident.

PW1 in his evidence stated that he sustained fracture of lower 1/3rd of left thigh including left knee joint, fracture of right wrist joint, fracture of lower 1/3rd of right radius, fracture of left clavicle, injury over left side of fore head, and multiple injuries all over the body. It is further stated that immediately after the accident, he was shifted to Government Hospital, Wanaparthy and later shifted to Siri Noble Hospitals, Kurnool, where he took treatment as an in-patient from 04.09.2002 to 25.09.2002. During that period, he underwent

surgery on 11.09.2002. In order to prove the nature of injuries and the disability, the petitioner got examined the doctor, who treated him, as PW.2.

PW.2, who is an orthopaedic surgeon deposed that on 11.09.2002 he conducted surgery to the fracture of femur bone with bone grafting. Plaster of paris was applied to right wrist. Knee joint movements and right wrist joint movements of PW.1 were restricted due to mal united fracture. PW.2 assessed the disability at 40% and also issued the disability certificate Ex.A4. Though PW2 was cross examined at length nothing useful was elicited to disprove his testimony.

A perusal of Ex.A3 Wound Certificate and Ex.A5 discloses that the petitioner sustained fracture of left femur, fracture of lower third of radius on right side, fracture of left clavicle. Ex.A5 discharge summary would show that the petitioner was admitted as in-patient in Siri Noble Hospitals, Kurnool on 04.09.2002 and was discharged on 26.09.2002. PW.2 assessed the disability sustained by the petitioner at 40%.

The evidence of PW1 coupled with Exs.A5 to A6 clearly establish that the petitioner was under the medical treatment of PW2. The evidence available on record would show that immediately after the accident the petitioner took treatment in Siri Noble Hospitals, Kurnool from 04.09.2002 to 26.09.2002.

As seen from the record, the Tribunal awarded Rs.1,99,000/- under the following counts.

1. Towards loss of earnings
(Rs.25,200/- x 16.51 x 40%) Rs. 1,66,420.00
2. Medical expenses Rs. 17,771.00
3. Towards future treatment Rs. 14,809.00

The Tribunal did not specifically awarded any amount towards pain and suffering and also towards loss of amenities in life. The evidence on record as referred to above establish pain and trauma which the petitioner must have undergone from 03.09.2002 to 26.09.2002 ie. during the period of his treatment at Government Hospital, Wanaparthy and also in the hospital of PW.2. Definitely no amount of money can compensate the pain and trauma undergone by the petitioner. The unimpeached evidence of PW.2 goes to show that the

movements of left knee joint and right wrist joints were restricted. Apart from that his evidence also indicate that the petitioner was not able to perform heavy labour work and squat on the floor. Definitely PW.1 must have been put to great inconvenience and hardship in his day today activities. Restricting movements of left knee joint and right wrist joint must have definitely prevented him from leading a life which he would have lived otherwise. Therefore, the petitioner was not in a position to participate freely in his day today activities and enjoy the life like a normal person. Though PW.2 may not be a member of the Board to assess the disability but having regard to the nature of injuries sustained and as no amount is awarded towards pain, suffering, trauma and physical deformity it can be said that the compensation awarded is just and reasonable. Hence, I see no merits in the appeal and the same is liable to be dismissed.

Accordingly, the appeal is dismissed confirming the award dated 02.02.2007 passed in O.P.No.490 of 2003 on the file of the Motor Accidents Claims Tribunal (District Judge), Mahaboobnagar. There shall be no order as to costs.

The miscellaneous petitions, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

21.09.2015

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