

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.1093 of 2003

JUDGMENT:

This is an injured-claimant's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 29.11.2002 passed in M.V.O.P.No.263 of 1998 by the learned Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Chittoor.

2. I have heard the submissions of the learned counsel for the appellant/claimant and the learned counsel for the 2nd respondent-Oriental Insurance Company Limited.

3. The appeal against the 1st respondent/owner-cum-insured was dismissed for default on 28.11.2011. Even though the appeal was dismissed against the said respondent, the statutory liability of the insurance company survives for consideration. Similarly, since there is a contract, the contractual liability of the Insurance Company also survives. There is no need for the presence of the owner of the vehicle/1st respondent to decide the question of statutory liability as well as the contractual liability of the Insurance Company at the appellate stage in 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. The above view finds support from a judgment of a Division Bench of this Tribunal in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[1].

4. The case of the claimant, in brief, is as follows:

The petitioner is a lorry driver since more than twenty

years. At the time of the accident, he was working as a driver on the lorry bearing registration no.AP-03-U/431 of one L.K.Parvathi, Irala Post, Irala Mandal of Chittoor District. On 13.08.1995, while driving the lorry, loaded with chocolates of Nutrine Company Limited, on Pune by-pass road, the petitioner had stopped the lorry at about 4.30 AM in front of Gokul Hotel, which is on the left side of the road. He went to the other side of the road for attending calls of nature. After attending calls of nature and while he was crossing the road towards Gokul Hotel, a lorry bearing registration no. MH-04-S-3233 of the 1st respondent being driven by its driver at a high speed and in a rash and negligent manner came from Bombay side and dashed the petitioner. In the said accident, he had sustained a bleeding head injury besides injuries to both his legs. The driver of the said lorry went away without stopping the lorry, after the accident. At that time, the son of the petitioner and the cleaner of the lorry by name Nagaraj were sitting in the petitioner's lorry. Immediately, the matter was reported to the Station House Officer, Poud Police Station, which was at a distance of about one hundred yards from the place of accident. The petitioner was shifted on a police jeep to Sassoon General Hospital, Pune at about 6 AM on 13.08.1995. The petitioner received treatment in the said hospital for about 1 ½ months. The fractured bones in both the limbs were corrected by fixing implants. The wounds got infected. The petitioner had expressed his desire to get himself discharged from the said hospital to take treatment at Tirupati. Accordingly, he was discharged on 22.09.1995. He was taken by train to Chittoor and was admitted in a private hospital by name Sri Venkateswara Hospitals, Tirupati on 23.09.1995. After treatment, he was discharged on 13.10.1995. By that time, his legs were swollen and pus was discharging from the wounds. He was admitted as an inpatient in Balaji Institute of Surgery, Research and Rehabilitation for the disabled on the same day.

He was later admitted in S.V.R.R. Hospital, Tirupati as an inpatient. The steel rods inserted in the legs were removed. He had received further treatment from Bindu Nursing Home, Chittoor. The wounds were not cured and puss is coming out of the wounds. He had spent Rs.1,00,000/- on his treatment, medicines, doctor's fee and attendant charges. He became permanently disabled. He is not in a position to drive the lorry or any other vehicle. During the period of hospitalization, he could not attend to agricultural operations. Therefore, he had suffered loss of income from agriculture. His wife, mother, three unmarried daughters and son are dependent upon him. Hence, the petitioner is entitled to a compensation of Rs.4 lakhs. The 1st respondent-owner of the lorry-cum-insured of the lorry involved in the accident and the 2nd respondent-insurance company are jointly and severally liable to pay the compensation.

5. The 1st respondent had remained *ex parte* before the Tribunal. The 2nd respondent filed written statement resisting the claim of the claimant on various grounds. The averments in the counter of the 2nd respondent, in brief, are as follows: 'The petitioner was working as lorry driver and was earning Rs.2,000/- per month as salary and is getting an income of Rs.45,000/- per annum from agriculture is not admitted. The manner and method of accident pleaded by the petitioner are denied. The petitioner had suddenly crossed the road and came into contact with the vehicle of the 1st respondent. Therefore, he was alone responsible for the accident. The allegations that the petitioner had suffered permanent disability and is incapacitated to drive the lorry and to attend to his agricultural operations are not admitted. He had suffered simple injuries. He did not suffer any grievous injuries. He did not suffer permanent disability. The petitioner did not produce any disability certificate issued by

Medical Board. The 2nd respondent-insurance company is entitled to protection under the provisions of Sections 147 and 170 of M.V. Act. The number of the vehicle furnished by the petitioner is not tallying with the records of the 2nd respondent-insurance company. It's liability is limited as per the terms and conditions of the policy. The liability is subject to the validity of the certificate of insurance, the permit of the lorry, the vehicular documents and the driving licence of the petitioner. At the time of the accident, the petitioner was on duty as driver on the vehicle bearing No.AP02U431. However, he has not impleaded the owner and the insurer of the said vehicle on which he was working as a driver. The compensation is payable by the owner and insurer of the lorry on which the petitioner was on duty, at the time of the accident. The petition is liable for dismissal for non-joinder of the necessary parties. The petitioner has to file an affidavit that he did not file any application for compensation under the provisions of the Workmen's Compensation Act before any appropriate Forum. The petition is liable to be dismissed.

6. At trial, the claimant, an eye-witness, a manager and a Doctor were examined as PWs 1 to 4 and exhibits A1 to A18 were marked on the side of the claimant. No oral evidence was adduced and no documents were marked on the side of the 2nd respondent-Insurance Company. On merits, the Tribunal, having held that the respondents 1 and 2 are jointly and severally liable to pay the compensation had partly allowed the petition granting a total compensation of Rs.1,60,000/- together with interest at 9% per annum simple from the date of the petition, i.e., 15.6.1998 and till the date of deposit. Aggrieved of the said award, the claimant had preferred this appeal.

6. (a) The learned counsel for the claimant would contend as follows:

“The Tribunal had erred in refusing to grant the medical

expenditure incurred by the claimant. The tribunal had failed to see that as per the latest judgment of this Court, if the percentage of disability is more than 50%, it should be construed that the loss of earning capacity of the claimant is cent percent and that the claimant is entitled to compensation for loss of earnings on that basis. The tribunal had failed to see that there is no contributory negligence as held by the Tribunal as the accident had occurred due to the rash and negligent driving of the driver of the 1st respondent's vehicle. The Tribunal had failed to see that the claimant had produced material to show that he had undergone several operations and took treatment in a number of hospitals and had incurred more than one lakh of rupees towards medical expenditure and that as such, he is entitled to compensation under the head 'Hospital, medical, transport, attendant and incidental expenses'. The Tribunal had failed to see that PW4 who is an expert and who had treated the claimant had categorically stated that PW1 had suffered permanent disability to the extent of 40% and that the claimant is not in a position to attend to his regular duties as in the past and that the disability is permanent. Therefore, the tribunal ought to have determined the compensation on that basis. The Tribunal had failed to see that due to the permanent disability suffered by the appellant, he had lost his job and that therefore, he is entitled to compensation under the head 'loss of earnings'. The tribunal had failed to see that the appellant is having agricultural lands and that on account of injuries sustained in the accident, he could not attend to his agricultural operations and that therefore, he had suffered loss of earnings on that score also. The tribunal did not award reasonable and fair compensation."

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

The Tribunal having considered the oral and documentary evidence had rightly held that the accident had occurred due to 50% contributory negligence of the petitioner, who is a driver. The tribunal had correctly determined the compensation awardable to the claimant at Rs.1,60,000/-. The Tribunal having properly appreciated the oral and documentary evidence had awarded just compensation. There are no grounds much less valid grounds to award more compensation than that was awarded by the Tribunal. There is no merit in the appeal. The appeal is liable for dismissal.

7. The points that arise for determination in this appeal are:

1. **Whether the pleaded accident resulting in injuries to the petitioner had occurred due to the rash and negligent driving of the driver of the lorry bearing No.MH-04-S/3233?**
2. **Whether the compensation awarded by the Tribunal is not reasonable, just and fair in the facts and circumstances urged by the claimant? And, if so, what shall be the reasonable, just and fair compensation to be awarded to the claimant?**

8. **POINT NO.1:**

At the outset, it is to be noted that the tribunal had held that the petitioner/claimant had contributed to the accident by his negligence and it had fixed the percentage of his contribution to the accident at 50%. The learned counsel for the claimant would contend that the said finding is erroneous and is not based on proper appreciation of evidence. On the other hand, the insurance company is supporting the said finding of the tribunal. Therefore, it is necessary to advert to the pleadings and the relevant evidence. The case of the petitioner in regard to the manner of accident, is this: "On 13.08.1995, while driving the

lorry, loaded with chocolates of Nutrine Company Limited, on Pune by-pass road, the petitioner had stopped the lorry at about 4.30 AM in front of Gokul Hotel, which is on the left side of the road. He went to the other side of the road for attending calls of nature. After attending calls of nature and while he was crossing the road towards Gokul Hotel, a lorry bearing registration no. MH-04-S-3233 of the 1st respondent being driven by its driver at a high speed and in a rash and negligent manner came from Bombay side and dashed the petitioner. In the said accident, he had sustained a bleeding head injury besides injuries to both his legs. The driver of the said lorry went away without stopping the lorry, after the accident.” The defence of the insurance company is in the nature of general denial. It is specifically stated in its counter that the accident had occurred due to the negligence on the part of the petitioner, who had suddenly crossed the road and that therefore, he is responsible for the accident. The claimant as PW1 had deposed that he had stopped and parked the lorry near Gokul Hotel for taking tea and that when he was checking the lorry and was standing behind his lorry, the lorry bearing no. MH-04-S-3233 being driven rashly and negligently by its driver came from the opposite direction and dashed the bumper and also the petitioner and that in the said accident, he had sustained injuries. He had also stated in his evidence that after attending calls of nature, he had returned to the left side and that the lorry came from opposite direction at a high speed. In his cross-examination, he had denied the suggestion that he had suddenly crossed the road and that there is negligence on his part and hence, the insurance company is not liable to pay any compensation. He had exhibited exhibit A1, the copy of the FIR and exhibit A2, the copy of the charge sheet with their English translations besides exhibit A13-the copy of the charge sheet and also his injury certificate besides other documents including the

copy of the judgment in STC 2131/95, where under the driver of the crime lorry was convicted on his plea of guilty and was sentenced to pay fine. However, since the crime record revealed that the accident had occurred when he was crossing the road but not while he was standing behind his lorry, the tribunal had disbelieved the version of the petitioner that the driver of the crime lorry was solely responsible for the accident and had recorded a finding that the accident was due to the 50% contributory negligence of the petitioner. In the well considered view of this Court, merely on the basis of averments in the crime records, it is not possible to accept the finding of the tribunal, more particularly, as the evidence of PW1 when read with the contents of the crime records would show that the accident had occurred due to the rash and negligent driving of the driver of the crime lorry and that police investigation had also revealed the said fact and that therefore, the police concerned have charge sheeted the driver of the crime lorry. Further, the driver of the crime lorry had admitted his guilt in the summary trial case and on his admission that he was responsible for the accident, he was convicted and sentenced to pay fine. Therefore, in the light of the evidence brought on record, as rightly contended by the learned counsel for the appellant-claimant, it is not possible to hold that the petitioner/claimant was also responsible for the accident. Hence, this Court finds that the finding of the tribunal that the accident had occurred due to 50% contributory negligence of the petitioner/claimant is unsustainable and that the said finding, therefore, warrants interference. For the reasons aforementioned, the said finding of the tribunal is accordingly set aside and the point is answered holding that the pleaded accident resulting in injuries to the claimant had occurred solely due to the rash and negligent driving of the driver of the lorry bearing registration No.MH-04S/3233.

9. POINT NO.2:

As regards injuries and the disability, the specific case pleaded by the petitioner is this: "On sustaining injuries in the pleaded accident, the petitioner was immediately taken by a police jeep to Sesson General Hospital, Pune on 13.08.1995 at about 6.05 AM. The petitioner had received treatment in the said hospital for about 1 ½ months. The fractured bones of in both the limbs were corrected by fixing implants. The wounds got infected. The petitioner had expressed his desire to get himself discharged from the said hospital to take treatment at Tirupati. Accordingly, he was discharged on 22.09.1995. He was taken by train to Chittoor and was admitted in a private hospital by name Sri Venkateswara Hospitals, Tirupati on 23.09.1995. After treatment, he was discharged on 13.10.1995. By that time, his legs were swollen and pus was discharging from the wounds. He was admitted as an inpatient in Balaji Institute of Surgery, Research and Rehabilitation for the disabled on the same day. He was later admitted in S.V.R.R. Hospital, Tirupati as an inpatient. The steel rods inserted in the legs were removed. He had received further treatment from Bindu Nursing Home, Chittoor. The wounds did not heal and the infection did not subside even as on the date of the filing of the petition. He became permanently disabled. He is not in a position to drive the lorry or any other vehicle." Per contra, the defence of the insurance company is in the nature of denial. The claimant reiterated his stand in his evidence and had further stated that he was bed ridden for six months in all and that after the accident, he did not renew his driving licence and that he is not able to work as before and that he is requiring assistance even for attending daily chores and that the injuries did not heal and that puss is still coming out of the wounds and that he is not able to get on with his normal work and that he is not able to walk without the aid of a stick and that he is not able to attend to his

routine work also without the aid of his wife. In his evidence, the exhibit A3, the injury certificate issued by Sesson General Hospital, Pune; exhibit A4-the discharge summary issued by the said Hospital; exhibit A5-the case sheet issued by S.V.R.R.Hospital, Tirupathi; exhibit A6-the discharge summary issued by S.V.R.R.Hospital, Tirupati; exhibit A7-the certificate dated 29.05.1998 issued by Dr.R.Purushotham Reddy of Bindu Nursing Home, Chittoor; exhibit A8-the pair of x rays films; exhibit A9-the O.P chit issued by Bindu Nursing Home, Chittoor; exhibit A10- a pair of photos along with negatives; exhibit A11-the certificate issued by Rayalaseema Hospital, Tirupati; exhibit A12-the panchanama along with translation; exhibit A13-the certified copy of charge sheet as well as judgment in STC 2131 of 1995; exhibit A14-the certificate issued by a Translator, exhibit A15-the bunch of prescriptions issued by Venkateswara Hospital (6 nos.) Tirupati; exhibit A16-the prescription issued by Medinova Hospital, Pune; exhibit A17-the bunch of prescriptions issued by BIRDS Hospital (10 Nos.), Tirupati and exhibit A18-the certified copy of the ROR issued by the Mandal Revenue Officer, Irala were marked. In his cross-examination, he had maintained his stand and had further stated that he had not obtained the disability certificate from S.V.R.R. Hospital, Tirupati, Birds Hospital, Tirupati and Medinova Hospital, Pune. He had denied the suggestion that he did not receive any treatment from Dr. Purushotham of Chittoor and that exhibit A7 was simply obtained for the purpose of the claim. PW2-Dr. Purushotham Reddy having stated that he had not treated PW1 prior to the examination on 29.5.1998 for the purpose of assessment of disability, had further stated that on examination of PW1, he has found discharge of puss from both the thighs due to infection of bones and mal-union of the thigh bone on the left side with shortening of the leg by 6 cms., besides deformity and limitation of movements of the knee joint by 30 degrees. He had further stated that the muscles of the

thigh have become hard and have lost their elasticity and that he had advised PW1 to undergo operations for removal of necrotic bone. This doctor had assessed the disability at 35% to 40%.

According to his evidence, it is difficult for PW1 to drive vehicles and that due to shortening of leg, PW1 had suffered permanent disability. In his cross-examination, he had stated that he is not aware of the treatment received by the petitioner after the year 1998 and that the disability was assessed in the year 1998 and that he had advised operation in order to see that the disability further does not increase and that the shortening of leg can be rectified by an operation and that Rs.5 lakhs would be required to be spent on the said operation and that he is not aware if TTD BIRD Hospital performs such operations free of cost. He denied the suggestion that the disability assessed by him is not correct.

10. I have thus carefully gone through the evidence. The above analysed evidence on record would show that PW1/the claimant who was of 45 years of age at the time of the accident had suffered fractures of both (thigh) bones of both the legs and that the said injuries did not heal even by the year 1998 and that the bones of both the thighs are infected and that the thigh bone on the left side was mal-united and that he had suffered permanent disability due to shortening of left lower limb by 6 cms. and that he had also limitation of movements of knee joint by 30 degrees and that the muscles of the thigh have become hard and lost their elasticity. 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.40,000/- is awardable as compensation under the heads 'injury', 'shock', 'pain and suffering'; and the same is accordingly

awarded.

10.1 As regards the claim in regard to hospital, medical, transport, extra nourishment, attendant and other incidental expenses, the petitioner had deposed that he had spent Rs.1,00,000/- on his treatment so far and that he is still undergoing treatment. However, he did not file any medical bills or other receipts. From the record, it appears that he had received treatment from various Hospitals including a private hospital for a considerable length of time. In a decision in **Managing Director, APSRTC v. Kathavath Gopal and another**^[2], this Court had 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. Further, as per the ratio in the decision in **Govind Yadav v. New India assurance Co. Limited**^[3] compensation under the present group of heads has to be determined taking into consideration the amount likely to be incurred in future for physiotherapy and medical expenses also. The evidence of the doctor in the instant case would show that he had advised PW1 to undergo operations in order to see that the disability does not further increase. Even if PW1 undergoes future operations and treatment in a Government Hospital or in a hospital which provides free treatment, yet, he has to incur expenditure on transport, attendant, medicines, extra nourishment besides incidental expenses. He had already received treatment for a considerable length of time. In the facts and circumstances, a sum of Rs.1,00,000/- is awardable under the heads 'hospital, medical, extra nourishment, attendant's, transport and incidental charges' including future medical expenses; and the same is accordingly awarded.

10.2 Coming to claim under the head 'loss of earnings' (past), the claimant's case is that he used to work as a lorry driver and earn Rs.2,000/- per month. He had suffered two major fractures viz., fractures of (thigh) bones of both the legs and consequential disability. 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 fracture and other factors. A further time of one or two months is generally required for physiotherapy and getting normal movements of the limbs. The evidence on record shows that PW1 had received treatment for a long time. Hence, it is reasonable to accept that he is out of work at least for six months completely. Accordingly, Rs.12,000/- (6 months X Rs.2,000) is awarded under head of 'loss of earnings' (past).

10.3 Coming to the claim under the head 'loss of earnings' (present and future), it is to be noted that the evidence on record amply establishes that the claimant had sustained permanent disability. The evidence of the doctor and the contents of the disability certificate under exhibit A7 would show that the percentage of disability was assessed at 35% to 40%. The tribunal having noted that the claimant is not in a position to drive the lorry and that he cannot drive a lorry or any other vehicle and having further considered that the disability impacted his earning capacity had held that the functional disability or loss of earning capacity is 100%. Since the petitioner is of 45 years of age at the time of accident, the appropriate multiplier as per the precedential guidance in **Smt.Sarala Verma v. Delhi Transport Corporation** ^[4] is '14' (Fourteen). The annual income of the deceased is Rs.24,000/- (12 X Rs.2,000/-). Accordingly, the loss of income (present and

future) works out to Rs.3,36,000/- (14 x Rs.24,000/). Since the functional disability is considered as 100%, no further deductions need be made. Hence, the said sum is accordingly awarded under the head ‘loss of earnings (present and future)’.

10.4. Coming to the claim 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, a sum of Rs.50,000/- is awarded in the facts and circumstances of the case.

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

Sl. No.	Head of compensation	Amount (in Rs.)
(1)	Injury, shock, pain and suffering	40,000/-
(2)	Hospital, medical, extra nourishment, attendants’, transport and incidental charges including future medical expenses	1,00,000/-
(3)	Loss of earnings (past, present and future) [Rs.12,000/- +Rs.3,36,000/-]	3,48,000/-
(4)	Loss of amenities of life, loss of expectation of life and social disability and other group of heads	50,000/-
Total		5,38,000/-

(Rupees Five Lakhs Thirty eight thousand only)

10.5 The claimant claimed Rs.4,00,000/-. The compensation as determined and to be awarded worked out to Rs.5,38,000/-, which is more than the amount claimed by the claimant. The law is now well settled that if the facts of the case so warrant, more compensation than claimed can be awarded. In the decision in the case of **Nagappa v. Gurudayal Singh and others**^[5] it was held that under the M.V Act there is no restriction that Tribunal

cannot award compensation amount exceeding the claimed amount and that the function of the Tribunal is to award just compensation, which is reasonable on the basis of the evidence produced on record.

10.6. Accordingly, an amount of Rs.5,38,000/- is awarded to the claimant. Under the present law and in the facts and circumstances, the claimant is not entitled to any other compensation amounts.

11. The compensation already awarded by the Tribunal is Rs.1,60,000/-. The additional compensation now awarded is Rs.3,78,000/-. Since the Insurance Company did not prefer any appeal assailing its liability to pay the compensation and the only question involved in this appeal is in regard to the quantum of compensation, there are no other issues to be adverted to and decided in this appeal. Therefore, it follows that the respondents 1 and 2 are jointly and severally liable to pay the additional compensation amount awarded to the claimant. The point is answered accordingly.

12. On the compensation already awarded, the trial Tribunal had granted interest at 9% per annum simple. 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.

13. In the result, the appeal is allowed with costs and a total compensation of Rs.5,38,000/- (Rupees Five Lakhs thirty eight thousand only) is awarded to the claimant. Having regard to the facts and circumstances, the insurance company is directed to deposit before the Tribunal the enhanced portion of compensation i.e., Rs.3,78,000/- (Rupees Three Lakhs Seventy eight Thousand only) with interest at 7.5% per annum simple from the date of the original petition till the date of deposit and also

costs within two months from the date of the receipt of a copy of this judgment. The already awarded compensation or any portion thereof may also be deposited before the Tribunal accordingly, if not already paid or deposited as per the award of the Tribunal. The claimant shall pay, as per the procedure, the deficit court fee on the difference compensation amount i.e., the amount awarded in excess of the amount claimed. On such deposit of the amount before the Tribunal, the claimant is permitted to withdraw entire costs and also Rs.2,00,000/- (Rupees Two Lakhs Only) for the present. The Tribunal shall keep the balance compensation amount along with interest in a fixed deposit in the name of the claimant in any Nationalised Bank till the release of the same to the claimant as per the norms applicable.

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

M. SEETHARAMA MURTI, J

25th April, 2016
RAR

[\[1\]](#) 2001(1) ALD 453 (DB)

[\[2\]](#) 2003(5) ALD 198

[\[3\]](#) IV (2011) ACC 668 SC

[\[4\]](#) 2009 ACJ 1298

[\[5\]](#) AIR 2003 SC 674