

HON'BLE MR.JUSTICE N.BALAYOGI

M.A.C.M.A.No.1361 of 2009

JUDGMENT

The appellant/claimant aggrieved by the award and decree dated 17.11.2006 in O.P.No.847/2001 passed by the Chairman, I Additional Motor Accidents Claims Tribunal (I Additional District Judge), Nizamabad preferred this appeal on the grounds that the Tribunal did not appreciate the medical evidence or disability in the prospective manner, that too in the absence of contra evidence and in respect of fractures and other injuries, also the expenditure incurred towards treatment, transport, attendant and lodging and failed to award any amount towards pain and suffering loss of income and medical bills. Further contended that the Tribunal did not award compensation in all heads, present and future and no proper income is fixed.

The claim for the appellant in brief is as follows:

2. On 15.12.2000, while the appellant/petitioner was returning from Indalwai village towards Nizamabad on a Bajaj Motor Cycle bearing No. AP-25T-8390 as a rider, very slowly on the side of the road, at about 7.30 P.M, when he reached near Boregaon bridge, at the same time, one Tractor & Trolley bearing No. AP-25D-577 and AP-25D-4877 came with high speed with rash and negligent manner hit the motor cycle of the appellant/petitioner. As a result, the appellant/petitioner sustained compound depressed fracture of right frontal bone with extramural hemotoma, fracture at left maxillary sinus and Maxilla, injuries on head, hands and multiple grievous injuries of

other parts of the body. Immediately the deceased was shifted to Dr. Laxma Reddy Hospital, Nizamabad. From there he was shifted to Yashoda Hospital, Hyderabad and admitted in that hospital as inpatient from 16.07.2000 to 27.12.2000 and he underwent surgery.

3. At the time of accident, the petitioner was aged about 42 years and was working as Head Muneem in Sri Balaji Industries, Manikbhandar, Nizamabad and getting Rs.6,000/- per month. Apart from that, by doing business of rice and paddy he was earning Rs.4,000/- per month. So far, he spent an amount of Rs.1,50,000/- towards medical expenses. Hence, the appellant/petitioner claimed a compensation of Rs.4,00,000/- against the respondent No.1 and 2.

4. The 1st respondent filed counter affidavit contending that driver of the Tractor and Trolley has valid and effective licence and there is no negligence on the part of the driver of the Tractor and Trolley and that the claimant has to prove the age, income of the petitioner, the manner of the accident and nature of injuries stated in the petition and the expenditure incurred towards medical expenses. The further contention of the respondent is that the amount claimed is highly excessive and out of all proportions. Hence, the 2nd respondent is not liable to pay any compensation.

5. The Tribunal, having considered the pleadings of both parties, settled the following issues for trial :

- “1. Whether the accident was due to rash and negligent driving of the Tractor & Trolley bearing No. AP-25D-577 and AP-25D-4877 by its Driver?***
- 2. Whether the petitioner is entitled for compensation? If so, to what amount and against which of the respondents ?***

3. *To what relief?"*

6. During the course of trial, the claimant got examined P.W.s 1 to 3 and marked Exs A1 to A11 on his behalf. No evidence is let in by the respondent No.2 but Ex.B1 was got marked on its behalf.

7. There is no dispute that the accident occurred on 15.12.2000, involving Tractor & Trolley bearing No. AP-25D-577 and AP-25D-4877 due to the rash and negligent driving of the tractor and trolley by its driver. The Tribunal awarded Rs.2,00,000/- against the respondent No.1 and 2 jointly and severally with interest at 7.5% per annum from the date of petition till deposit of payment.

8. Ex.A1 is a copy of F.I.R., Ex.A2 is a copy of charge sheet filed by the investigating officer against driver of the tractor, Ex.A3 is a copy of discharge summary of Yashoda Hospital, Ex.A4 is judgment in CC No.77/2001. Ex.A5 Salary certificate, Ex.A6 Medical bills (6), Ex.A7 Medical report, Ex.A8 Prescriptions (6), Ex.A9 Outpatient card, Ex.A10 a copy of driving licence, Ex.A11 a copy of G.P.A.. No rebuttal evidence was adduced by the respondent/Insurance company to the oral evidence of P.Ws1 and 2 and the documentary evidence of Exs.A1 to A11.

9. The appeal filed by the claimant is confined to determining whether the quantum of compensation, which was awarded by the Tribunal, is just and proper or whether it requires further enhancement, in the interests of justice.

10. The claimant himself is examined as P.W.1 besides examining Dr.P.Rangandham, who has been working as consultant Neuro Surgeon, Yashoda Hospital, Hyderabad P.W.1 on 16.12.2000. The

evidence of P.W.1, the injured, is that on 15.12.2000 at Boregaon Bridge at about 7.30 P.M., while he was proceeding from Indalwai village on Motor Cycle, a Tractor Trolley came in rash and negligent manner dashed the motor cycle and the accident was due to rash and negligent driving of the driver of the Tractor and Trolley.

11. In Ex.A-1-copy of FIR, there is a specific assertion that on 15.12.2000, after completion of work, the appellant/petitioner while returning from Indalwai village towards Nizamabad, on his motor cycle bearing No. AP-25-F-8390 at about 7.30 P.M. near Boregaon Bridge, in the meantime, Driver of the Tractor & Trolley bearing No. AP-25D-577 and AP-25D-4877 came in opposite direction with high speed in rash and negligent manner dashed the motor cycle. The investigating officer also stated the same facts in the charge. In Ex.A4-judgment copy in CC No.177/2001 it is said that driver of the tractor admitted his offence and accordingly was convicted and sentenced to pay a fine of Rs.1,000/- for the offence punishable under Section 338 of I.P.C.

12. The Tribunal has considered the evidence of P.W.1 supported by Ex.A1, Ex.A2 and Ex.A4, came to the right conclusion that the accident occurred due to rash and negligent manner by the Tractor & Trolley bearing No. AP-25D-577 and AP-25D-4877. The contention of the appellant/petitioner is that the Tribunal did not consider the oral and medical evidence in the prospective manner that too in the absence of contra evidence, while considering the injuries and awarding compensation. In support of his contention the counsel for the appellant/petitioner relied upon a judgment in **Syed Sadiq Ors.**

Vs Divisional Manager, United India Insurance Company Limited¹

wherein the Apex Court held that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Considering that the appellant/claimant was self employed and was 24 years of age, the Apex Court held that he is entitled to 50% increment in the future prospects of income based upon the principle laid down in **Santosh Devi v. National Insurance Company Limited**. Further held that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, M-11 51 to 55 years.

13. In the present case, the evidence of P.W.1 is that in the incident he sustained grievous injuries on his fore-head, face, legs and hand and also he lost his left side tooth besides injuries on spinal cord. Immediately, he was shifted to Pragathi Nursing Home,

¹ 2014 (2)SCC 735

Nizamabad for treatment and from there he was shifted to Yashoda Hospital, Hyderabad, where he was treated as inpatient for 12 days and under gone head surgery and spent nearly Rs.2,00,000/- for treatment. Dr.P.Ranganadham, P.W.2 corroborating with the evidence of the PW-1, stated in his evidence that the appellant/claimant was examined by him on 16.12.2000. The injured was admitted with a history of road traffic accident on 15.12.2000 at 6.30 p.m. near Nizamabad. There was history of loss of conscious, bleeding from nose and vomiting. On examination, PW 1 was conscious, responding to treatment, commonly moving all the limbs except left lower limb. C.T. scan of the brain showed depressed and he was operated on 16.12.2000 and elevation of the depressed fracture frontal bone was done along with evacuation of extra neural haematoma. M.R.I.-Ex.A7 was taken on 18.12.2000 for the prosecution of P.W.2. The suggestion of PW1 and PW2 is that Ex.A7 was fabricated. P.W.2 during cross-examination confronted that they have given original Ex.A3 and Ex.A7 to P.W.1 and admits that Ex.A3 and Ex.A7 does not contain a signature.

14. The evidence of P.W.1 is that he took treatment in Yashoda Super Speciality Hospital. In support, he filed Ex.A6 bills and Ex.A8 advice at the time of discharge by the Yashoda Hospital along with prescriptions. Ex.A9 is out patient card for his treatment as outpatient. The evidence of P.W.1 supported by Ex.A-6, A-7, A-9 goes to suggest that Dr.Laxma Reddy, Nizamabad referred P.W.1 to Yashoda Hospital and the consultant Doctor was Dr.Mahender Reddy. P.W.1 was admitted in Yashoda Hospitals on 16.12.2000 and discharged on 27.12.2000 and accordingly he was treated as in-

patient for 11 days. In support of his treatment he enclosed medical prescriptions and Yashoda Hospitals final bill statement, besides discharge advice which is marked as Ex.A8. He was advised to use the tablets prescribed therein besides physiotherapy. The evidence of P.W.2 who is the proper person to speak about nature of injuries and treatment in the Yashoda Hospital, is that after discharging the P.W.1, he came to the Yashoda Hospital for treatment three times. Ex.A3 which is the discharge summary of P.W.1 shows that there is fracture of frontal bone involving sinuses at left maxillary sinus and maxilla, feature of haemosinus at ethmoid & maxillary sinuses, Subarachnoid Haemorrhage, MRI of cervical spine, Bone marrow edema/bone contusion involving C5 vertebral body and subend plate region of C6 vertebra superiorly. – Prevertebral bleed C1 to C5 vertebral body. Mild enlargement of cord with hyperintensity signal C3-4 level – cord contusion/edema. He confronts Ex.A3-Discharge Summary, Ex.A6- Medical Bills, MRI Report, Ex.A8 prescriptions and Ex-9 is out patient card. The evidence of PW-2 is corroborating in all respects with that of injuries mentioned in Ex.A3. Absolutely, there is no iota of evidence to prove disability particularly, permanent disability.

15. It is pertinent to note that the appellant's contention is that though he incurred huge expenditure towards treatment, lodging, including pain suffering, loss of income and medical bills and also present and future prospects no amount was awarded. When the claimant suffers permanent disability as a result of injuries, assessment of compensation, under the head of loss of future earnings, would depend upon effect and impact of such permanent

disability on the earning capacity. The appellant/petitioner has to produce evidence and prove permanent disability and the effect of the permanent disability on the earning capacity of the injured. After assessing loss of earning capacity, in terms of percentage of income, it has to be clarified in terms of money arrived at by adding the future loss of earning applying standard multiplier method, and loss to dependents.

16. The evidence of P.W.1 is that he spent nearly 2 lacs towards treatment. With respect to the medical expenses, incurred by the appellant / petitioner, he has produced medical bills which comes to Rs.66,668/-, against which Rs.6,500/- was allowed by the Yashoda Hospital and the balance amount was only as Rs.60,169. No other incidental bills like transportation, attendant charges, lodging charges were produced or submitted by P.W.1.

17. The Tribunal having considered the nature of the injuries and also Ex.A-6, awarded Rs.70,000/- towards medical expenses. Besides that awarded Rs.15,000/- for three grievous injuries and awarded Rs.75,000/- towards pain and sufferings. According to the evidence of P.W.1, P.W.2 and documentary evidence of Ex.A3-discharge summary the brain of the P.W.1 sustained depressed, fracture of the frontal bone, Extradural haematoma at frontal region on both sides, feature of haemosinus at ethmoid & maxillary sinuses. Subarachnoid haemorrhage, M.R.I of cervical spine, Bone marrow edema/bone contusion involving C5 vertebral body and subend plate region of C6 vertebra superiorly, Prevertebral bleed C1 to C5 vertebral body, Mild enlargement of cord with hyperintensity signal C3-4 level – cord contusion/edema, Degenerative centro left lateral

bulge, C5-6 with posterolateral osteophytes from inferior end plate of C5 causing moderate compression on thecal sac and that he had also undergone surgery for elevation of compound depressed fracture RT. Frontal bone & Evacuation of EDH, and while discharge he was advised also Physiotherapy and followup treatment, awarding of Rs.15,000/- for the three grievous injuries involving brain matter and cervical is very meagre, which require enhancement. Accordingly I feel awarding Rs.35,000/- to each injuries one and two, Rs.40,000/- for cervical spine injury is just compensation to meet the ends of justice and is accordingly awarded.

18. The Tribunal already awarded Rs.75,000/- towards pain and suffering which requires no interference. The Tribunal with regard to loss of earnings found that petitioner has not adduced any evidence as to how many days he took rest. Therefore, on considering the grievous nature of the injuries and also as per Ex.A3 as he was advised regular physiotherapy, and taking into consideration all those facts, the Tribunal came to the conclusion that he had to take rest at least 5 months, which requires no interference.

19. With regard to the earnings, the evidence of P.W.1 is that at the time of accident the P.W.1 is working as Head Muneem in Balaji Industries, drawing a salary of Rs.6,000/- per month and also he was supplying rice and paddy to others on commission basis thus earning Rs.4,000/- per month. After the accident, he is not doing any work and living only on his past earnings and savings. P.W.3 is the proprietor of Balaji Industries, whose evidence is that P.W.1 is working in his industry since 1985 as Head Muneem and they are paying salary of Rs.6,000/- per month. Absolutely, there is no

evidence about his earning in rice and paddy business and therefore, the Tribunal awarded Rs.30,000/- towards loss of earning for five months @ Rs.6,000 per month having accepted the evidence of P.W.3. Besides that, even though there is no evidence the Tribunal awarded Rs.10,000/- towards transportation and extra nourishment which does not require any modification. As could be seen from the award, the Tribunal has not awarded any amount towards attendant charges, pain and suffering. In such circumstances, taking into consideration the cost of living, the Petitioner, P.W.1 could have engaged attendant while staying in the hospital for 17 days, for which awarding Rs.2,000/- is just and reasonable and the same is awarded besides awarding Rs.15,000/- towards pain and sufferings.

20. In view of the above the total compensation is arrived at as follows:

1.Compensation for (3) grievous injuries (Rs.35,000/- + Rs.35,000/- + Rs.40,000/-)	Rs1,10,000-00
2.Compensation for medical bills	Rs. 70,000-00
3.Compensation for pain and sufferings	Rs. 75,000-00
4.Transportation and extra nourishment charges	Rs. 10,000-00
5.Compensation for loss of estate	Rs. 30,000-00
6.Attendant charges	Rs. 2,000-00
7.Pain and suffering	Rs. 15,000-00
	Rs. <u>3,12,000-00</u>

21. In the result, the appeal is partly allowed with costs by setting aside the award and decree dated 17.11.2006 in O.P.No.847/2001 on the file of Motor Accidents Claims Tribunal at Nizamabad. The amount awarded by the Court below is modified to a total amount of Rs.3,12,000/-(Rupees three lacs twelve thousand only) towards compensation to the appellant/petitioner. Consequently, the

respondents are directed to deposit the total compensation of Rs.3,12,000/- together with interest @ 7.5% per annum from the date of petition i.e. 05.06.2003 till the date of deposit, after deducting the amount, if any, already paid, within a period of one month from the date of receipt of a copy of this judgment.

22. On such deposit, the appellant/petitioner is permitted to withdraw the said amount.

23 Advocate fee is Rs.2,500/-

24. Miscellaneous petitions pending consideration, if any in the appeal shall stand closed in consequence.

JUSTICE N.BALAYOGI

Dated: 29.12.2017

JR

