

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 1503 of 2009

JUDGMENT:

1. The appellant/claimant aggrieved by the Award and decree dated 13.09.2006 in MOP.No. 138 of 2003 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Vizianagaram, the present appeal is preferred.

2. The contention of the appellant/claimant is that the Tribunal ought to have believed the evidence of PW.1 (claimant) and considered the income stated by him. The loss of earnings granted by the Tribunal is very meager. He further contended that deducting 1/3rd towards personal expenses and not granting any amount towards travelling expenses and extra nourishment is erroneous.

3. The claim of the appellant/claimant in brief is as follows: On 4.2.2003 at about 1.30 PM while the appellant/claimant was going on his cycle towards Poolb bagh colony and when he reached near Poolbagh junction, one TVS moped bearing No. AP 35B 4441 being driven by its rider in rash and negligent manner, at high speed, came behind and dashed his cycle, as a result of which, the appellant/claimant sustained multiple injuries on his body besides fracture to his left leg.

4. Immediately he was shifted to Government Hospital, Vizianagaram whereat he underwent treatment and subsequently he underwent treatment for about one month in Sai Vamsi Nursing

Home, Vizianagaram. He was 19 years as on the date of accident, hale and healthy and used to earn Rs.100/- per day by working in a Tea stall. Due to the injuries sustained in the accident, he lost earnings for long time.

5. Before the Tribunal, the first respondent remained ex parte. The second respondent filed counter contesting the claim petition and contended that the rider of the TVS moped bearing No.AP 35B 4441 was not having valid driving licence at the time of accident and that the first respondent was not the owner of the said moped and the same was not insured with it (second respondent). The compensation claimed is high and excessive.

6. The Tribunal having considered the rival contentions, framed the following issues for settlement:

1. Whether the accident took place due to rash and negligent driving of the driver of TVS Moped bearing No. AP 35B 4441 ?
2. Whether the petitioner is entitled for any compensation ?
3. Whether the respondents are liable to pay any compensation. ?
4. To what relief ?

7. In order to prove the claim, on behalf of the appellant/claimant, P.Ws.1 and 2 were examined and Exs.A.1 to A.8 and Exs.X.1 and X.2 were got marked. On behalf of the respondents, no evidence, either oral or documentary, was adduced.

8. On a thorough consideration of the evidence on record, the Tribunal find that the accident occurred due to the rash and negligent driving of the driver of TVS moped No.AP 35B 4441. On

assessing the compensation payable to the claimant, Tribunal awarded Rs.63,450/- with interest at 7% per annum from the date of petition till realization, holding that the respondents are jointly and severally liable to pay the said compensation.

9. Now the point that arises for consideration is, *'whether the Tribunal erred in assessing the monthly income of P.W.1 and further, whether deduction of 1/3^d towards personal expenses is legal, valid and can be sustained.'*

10. The appellant/claimant himself was examined as P.W.1 whose evidence is that at about 1.30 PM while he was going on his cycle to go to Phoolbaugh colony and on the way when he was peddling the cycle on the left side of the road, one TVS Moped being driven by its rider at high speed and in rash and negligent manner, came from behind and dashed his cycle. The only suggestion to P.W.1 was that he fell down from cycle on his own and TVS moped did not dash against the cycle; except the said suggestion, nothing adverse was elicited. Ex.A.1 is the copy of FIR, Ex.A.2 is the charge sheet. In Ex.A.1 FIR, the complaint was presented by P.W.1 himself specifically asserting that at about 1.30 PM while he was proceeding on his cycle, TVS moped bearing No. AP 35B 4441 came his behind and dashed the cycle on which he was riding. The Investigation Officer after thorough investigation filed charge sheet against M.Srinivasa Rao, finding that on 4.2.2003 while P.W.1 was proceeding on his cycle from Kothapeta Mandapam Veedhi to Pool Bagh Colony and when he reached Pool Bagh junction, the rider of

TVS moped bearing No. AP 35B 4441 being driven in high speed and rash and negligent manner caused the accident.

11. Absolutely there is no rebuttal evidence produced by the second respondent having taken plea that there is no negligence on the part of the rider of TVS moped bearing No. AP 35B 5551 and having given suggestion to PW.1 that he fell down from the cycle on his own and that TVS moped did not dash his cycle. In the absence of any rebuttal evidence, the Tribunal having considered the evidence of P.W.1 and Exs. A.1 and A.2 rightly came to the conclusion that the accident occurred due to rash and negligent driving of TVS moped bearing No. AP 35B 4441 by its driver.

12. With regard to the injuries sustained by P.W.1, there is the evidence of P.W.1, who deposed that immediately after the TVS moped dashed his cycle from behind, he fell down and sustained fracture injury to bones of left leg besides injuries all over his body. He was taken to M.R. Government Hospital, Vizianagaram, whereat he took treatment for one week as in-patient. Subsequently he took treatment in Sai Vamsy Nursing Home as in-patient whereat he undergone operation and fractured bones were corrected by nailing. The implants are still inside the limb. He incurred expenditure of Rs.40,000/- towards hospital charges, medicines, attendant, extra nourishment, transport and other incidental charges.

13. P.W.2, Civil Assistant Surgeon, who treated the appellant/claimant in the Government Hospital deposed that he advised the appellant/claimant for a X-ray to left thigh and on study

of X-ray vide Ex.A.8 and clinical examination, it reveals that he has old mal-united fracture shaft femur on left side with mild stiffness of left knee and hip joints with limping on left side and mild shortning of left lower limp and with implants inside. P.W.1 also deposed that implants are still in the leg. Accordingly the Medical Board assessed the disability suffered by the appellant/claimant at 30% and issued Ex.A.6 Disability Certificate. His OP chit is Ex.A.7 and case sheet received from the Government Hospital is Ex.X.1. X-ray taken at Government Hospital is Ex.X.2.

14. The evidence of P.Ws.1 and 2 is corroborated with each other and supported by Ex.X.1 case sheet, Ex.X.2 x-ray, Ex.A.3 wound certificate which establish deformity of left thigh, and that the injuries are grievous in nature. The doctor who examined and treated P.W.1 opined that the injuries suffered by the claimant/appellant are grievous in nature and might have been caused in the alleged accident.

15. The Tribunal having marshalling the facts and considering the oral and documentary evidence came to the conclusion that P.W.1 sustained grievous injuries and on account of the same, he cannot walk long distances and cannot do hard labour, will have difficulty in climbing stairs and in squatting. It is also the evidence of P.W.2 that P.W.1 requires further surgery for removal implants. P.W.2 also admitted that the injury mentioned in Ex.A.6 corresponds to the injuries appearing on Exs.X.1 and X.2.

16. With regard to the age of the appellant/claimant, he has not filed any document to show his age. So necessarily, reliance has to be placed on the material available on record. P.W.1 in his evidence deposed that he has studied up to 10th class, but he did not produce SCC certificate which is relevant for consideration of date of birth and consequently to determine the age. Ex.A.1-FIR, the earlier report submitted by P.W.1 himself, Ex.A.2-charge sheet, Ex.A.3 wound certificate issued by Civil Assistant Surgeon, District Hospital, Vizianagaram, Ex.X.1 case sheet would reveal the age of the injured/P.W.1, wherein his age is noted as 19 years. Accordingly the age of the appellant/claimant is taken as 19 years as on the date of the accident.

17. The evidence of P.W.1 is that he was earning Rs.100/- per day working in a tea stall. There is no rebuttal evidence to the evidence of P.W.1 in regard thereto. In the claim petition also, PW.1 stated that his income is Rs.100/- per day. In RAMACHANDRAPPA Vs. MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED (2011 ACJ 2436) the Apex Court took the income of daily wage coolie at Rs.4,500/- as his/her wages would range from Rs.100/- to Rs.150/- per day. In P. YASODAMMA Vs. BUCCHIREDDI (2006 ACJ 414) the Apex Court took the income of the claimant as Rs.3000/- as he was a labour. Inasmuch as the appellant/claimant himself stated in the claim petition that he was earning Rs.100/- per day working in a Tea stall and as there was no rebuttal evidence to the evidence of P.W.1, the income of the injured/P.W.1 can be taken at Rs.3000/- per month. But the Tribunal

despite no rebuttal evidence took the monthly income at Rs.1250/- which is erroneous and requires modification. As stated supra, the monthly income of the appellant/P.W.1 is taken at Rs.3,000/- or Rs.36,000/- per annum.

18. As stated earlier, the age of the appellant/claimant is 19 years as on the date of accident. The appropriate multiplier applicable for the said age is '18'. However, the Tribunal took the multiplier '16' which is not in accordance with the settled law of the Apex Court and hence the same requires to be modified. Following the decision of the Apex Court in SARALA VERMA Vs. DELHI TRANSPORT CORPORATION AND ANOTHER (2009 ACJ 1298), the appropriate multiplier for the age of '19' is '18'.

19. In NEW INDIA ASSURANCE COMPANY LIMITED Vs. CHARLIE AND ANTOHER (2005 ACJ 1131) the claimant was an injured person who traveled as pillion rider at the time of accident. He was 37 years and multiplier of 16 was applied and it has been enhanced to 18. Further the learned Counsel for the appellant therein contended that $\frac{1}{3}^{\text{rd}}$ has to be made towards personal expenses. Basing on the said decision, the Tribunal deducted $\frac{1}{3}^{\text{rd}}$ towards personal expenses. Accordingly, in the case on hand, if $\frac{1}{3}^{\text{rd}}$ is deducted towards personal expenses, then the annual income of the injured works out to be Rs.24,000/-. It is not in dispute that the Medical Board assessed the disability of the appellant/P.W.1 at 30%. Then the normal loss of earnings works out for 30% disability to be Rs.24,000/- x 18 x 30% =Rs.1,29,600/-.

20. The Tribunal based on Ex.A.4 bunch of medical bills, awarded Rs.6,700/- towards medical expenses. Since the said amount is based on the evidence at Ex.A.4, the same is legal. However, the Tribunal did not awarded any amount towards transportation charges, pain and suffering and extra nourishment, which is illegal and requires to be interfered. Based on the evidence on record, it is just and reasonable to awarded Rs.3,000/- towards transportation charges, Rs.6,000/- towards pain and suffering and Rs.5000/- towards extra nourishment. However, it is made clear that inasmuch as this Court assessed the compensation towards loss of earnings by applying appropriate multiplier, there is no need to award any further amount towards loss of earnings as was awarded by the Tribunal at Rs.3,750/-.

21. Thus, in all the appellant/claimant is entitled to the compensation of Rs. 1,29,000/- + 3,000/- + 6,000/- + 5,000/- + 6,700/- = Rs.1,49,700/-, which can be rounded to Rs.1,50,000/-.

22. By virtue of the policy which was in force as on the date of the accident, the respondents are jointly and severally liable to pay the said compensation.

23. For the foregoing discussion and in the result, the appeal is allowed, with costs, setting aside the Award and decree dated 13.09.2006 in MOP.No.138 of 2003 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-District

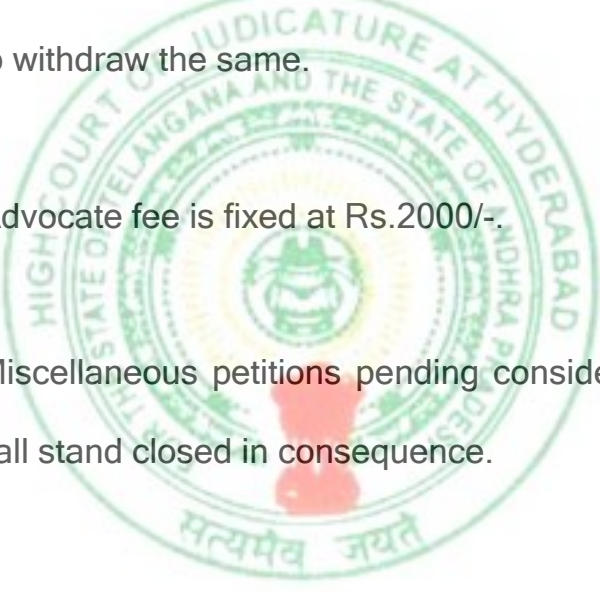
Judge, Vizianagaram. Consequently, the appellant/claimant is entitled to receive Rs. 1,50,000/- with interest at 7.5% per annum from the date of the petition i.e.27.02.2003 till the date of deposit.

24. The respondents are directed to deposit the said compensation jointly and severally within a period of thirty days from the date of receipt of a copy of this judgment, deducting amount already paid/deposited.

25. On such deposit is being made, the appellant/claimant is permitted to withdraw the same.

26. Advocate fee is fixed at Rs.2000/-.

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



JUSTICE N. BALAYOGI

DATED 22nd December, 2017.
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