

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.2004 of 2009

JUDGMENT:

1. The appellant/claimant, aggrieved by the Award and decree dated 18.09.2006 passed in MVOP No.1295 of 2005 by the learned Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Warangal preferred the present appeal.

2. The contention of the appellant/claimant is that the Tribunal erred in taking the disability at 10% even though P.W.2-Doctor deposed the disability at 15% to 20%. Further the Tribunal erred in awarding loss of income four months though the appellant/claimant took treatment for period of six months. The Tribunal also erred in taking income of the deceased at Rs.2,500/- per month instead of Rs.4,500/- per month.

3. On the other hand, the second respondent-National Insurance Company contended that the driver and owner of the motor cycle are necessary and proper parties to the proceedings and the claim without adding them is not maintainable. The Award passed by the Tribunal suffers from any legal infirmities.

4. The facts of the case are that on 27.03.2005 while the claimant was returning to home on Hero Honda Motor Cycle

bearing No. AP 36 L 4856 after completion of work in Mupparam village and when he reached Ambedkar statute in Madikonda at about 6.30 p.m., a Maruthi car bearing No. AP 36 M 7265 having driven at high speed in rash and negligent manner, came in opposite direction and hit the motor cycle, as a result of which, the appellant/claimant sustained fracture injury to right leg. He took treatment as In-patient in the Life Line Hospital, Hanamakonda from 27.03.2005 to 03.04.2005. He was completely bed ridden for six months and incurred expenditure of Rs.75,000/- for treatment.

5. Before the Tribunal, the appellant/claimant himself was examined as P.W.1 and the Doctor who treated the appellant/claimant was examined as P.W.2 and Exs.A.1 to A.6 and Ex. X.1-case sheet were got marked on their behalf. On behalf of the respondents none were examined nor any documentary evidence was adduced on their behalf.

6. There is no dispute with regard to the accident occurred involving Maruthi Car bearing No. AP 36M 7265. The respondents did not adduce any rebuttal evidence to the evidence of P.Ws. 1 and 2. The evidence of P.W.1 is consistent throughout and supported by Exs. A.1–FIR and Ex.A.3-Charge sheet.

7. In Ex. A.1–FIR, which is presented by Sri Mohd. Khaleel, owner of the motor cycle, it is specifically stated that the Maruthi Car bearing No.AP 36 M 7265 having driven at high speed in rash and negligent manner and in opposite direction

dashed the motor cycle. The Investigating Officer after thorough investigation filed charge sheet—Ex.A.3 against the driver of the Maruthi Car and found that the accident occurred due to rash and negligent driving of the said Maruthi Car.

8. Absolutely there is no rebuttal evidence adduced by the respondents. Therefore it was proved that there was negligence on the part of the driver of the Maruthi Car. In the absence of any rebuttal evidence, the Tribunal considered the consistent evidence of P.W.1 and supported documentary evidence in Exs.A.1 and A.3 and held that the accident occurred due to rash and negligent driving of the Maruthi Car AP 36M 7265.

9. In view of the clear finding of the Tribunal that due to the negligence on the part of driver of the Maruthi Car, which came in opposite direction with high speed and in rash and negligent manner, dashed the motor cycle. Further the first respondent remained ex parte and the second respondent has not chosen to adduce any oral evidence by examining driver of the Maruthi car or any other witness, which well established that the accident was due to rash and negligence on the part of the driver of the Maruthi Car bearing No. AP 36 M 7265. The owner and insurer of the motor cycle are not proper and necessary parties to the claim and the claim can be maintained without adding them.

10. With regard to age, occupation and income of the injured appellant/claimant, admittedly the appellant/claimant did not file any documentary evidence. With regard to the injuries suffered in the accident, he filed Ex. A.2–Wound Certificate. He also filed Discharge card–Ex.A.5, Case sheet–Ex. X.1 and bunch of medical bills and prescriptions–Ex. A.6 in proof of treatment.

11. Ex.A.2 is the Wound Certificate issued by the Medical Officer, Life Line Hospitals, Hanumakonda. Ex. X.1 is the case sheet and Ex. A.5 is the Discharge Card. The consistent evidence of P.W.1 is that he sustained following fracture injuries:

1. Commuted fracture both bones right leg middle third.
2. Fracture 5th and 6th ribs right side.
3. Lacerated wound to right leg.
4. Lacerated wound to left leg.
5. Abrasion to right thigh.
6. Abrasion to right leg.

12. P.W.2 was the doctor who spoke about the nature of treatment and also gravity of injuries. His evidence was supported by Ex. X.1–case sheet and Ex. A.5–discharge card to suggest that on 28.03.2005, P.W.1 undergone surgery for the fracture of both bones of right leg by interlocking nailing and he was discharged on 03.04.2005. Further the evidence of P.W.2 is that the appellant/claimant sustained 15% to 20% disability on account of traumatic stiffness of joints of right lower limb and half inch shortening of right lower limb. In the cross examination, P.W.2

stated that he has not recorded disability in Exs. X.1 and A.5. The clinching evidence of P.Ws. 1 and 2 and supported by Exs. A.5- Discharge card goes to suggest that the appellant/claimant was admitted in the hospital on 27.03.2005, undergone surgery on 28.03.2005 and discharged on 03.04.2005 and the doctor advised him for follow up treatment and review after five days.

13. The Tribunal well considered the evidence of P.Ws.1 and 2 and supported documentary evidence in Exs. A.2, A5 and A.6 and found that P.W.1 sustained six injuries including fracture injuries to both bones in right leg and 5th and 6th ribs right side and awarded compensation of Rs.36,000/- for the said injuries.

14. The evidence of P.W.2 is that P.W.1 is suffering from disability 15% to 20% due to traumatic stiffness joints of right lower limb and half inch shortening of right lower limb. P.W.2 who treated P.W.1 is the proper person to speak about disability. Though P.W.2 stated that P.W.1 is suffering from 15% to 20% disability and no rebuttal evidence was adduced by the respondents, however, the Tribunal took the disability at 10% only. Having considered the nature of fracture injuries sustained by P.W.1 i.e. fracture injuries to both bones in right leg and 5th and 6th ribs right side half inch shortening of right lower limb, and evidence of P.W.2, it can be said that P.W.1 sustained 15% permanent disability.

15. With regard to income of the appellant/claimant, his evidence is that he used to earn Rs.4,500/- per month by doing house wiring and working as Agent in Sahara India Limited. However, he did not produce any service certificate issued by the Sahara India Limited. During cross examination of P.W.1/claimant, he was suggested that he was not earning Rs.4,500/- per month. Since the deceased was working as Agent in Sahara India Limited and also doing house wirings, it can be presumed that the appellant/claimant was used to earn averagely Rs.3,000/- per month. But the Tribunal without considering the same took the monthly income of the appellant/claimant at Rs.2,500/- per month incorrectly. If 1/3rd is deducted towards his personal expenses, the balance/contribution to the family comes to Rs.2,000/- per month or Rs.24,000/- per annum.

16. In Ex. A.1, A2, A3, A5 and X.1, the age of P.W.1 was mentioned as 28 years and the same is also considered by the Tribunal. For the age of 28 years, the appropriate multiplier is '17'. Therefore the total loss of earnings of the appellant/claimant for 15% disability comes to $\text{Rs.24,000} \times 17 \times 15\% = \text{Rs.61,200/-}$.

17. There is also evidence of claimant/P.W.1, supported by Ex.A.3, A5 and X.1, that he was in the hospital from 27.03.2005 to 03.04.2005 and in view of the fracture injures to both bones right leg and 5th & 6th ribs right side, he required six months rest, but not four months as taken by the Tribunal. Therefore the

amount awarded by Tribunal at Rs.10,000/- towards loss of earnings for the period of treatment is modified by awarding compensation towards loss of earnings for the treatment period of six months at Rs.18,000/- (Rs.3,000 x 6 months).

18. Further, the Tribunal having found that Ex.A.6—Bunch of Medical Bills and prescriptions represent the expenditure at 35,972.76 Ps, erred in awarding Rs.30,000/- towards treatment and medicines despite acceptable evidence of P.W.2 and Ex.A.6 Medical bills. In view of the same, the compensation awarded by the Tribunal at Rs.30,000/- towards treatment and medicines is modified and I hereby award Rs.35,972.76 Ps.

19. The Tribunal awarded Rs.18,000/- for commuted fracture to both bones of right leg, Rs.10,000/- for fracture to 5th and 6th ribs on right side. Since compensation is awarded for permanent disability, these amounts shall stand merged with the said compensation. Besides that the Tribunal also awarded Rs.3,000/- each for lacerated wounds and Rs.1,000/- each for abrasion injuries, totaling to Rs.8,000/- (Rs.3,000 + 3,000 + 1,000 + 1000). Since these amounts appear to be just and reasonable, does not warrant any interference.

20. Further, I confirm awarding of Rs.1,000/- towards attendant charges, Rs.5,000/- towards transportation charges for P.W.1 and his attendant. However, considering the nature and gravity of the injuries suffered by the claimant and treatment

undergone therefor, it is just and reasonable to modify the award of compensation towards extra nourishment at Rs.2,500/- and enhance the same to Rs.5,000/-. Further, it is just and proper to award Rs.10,000/- towards future operation for removal of steel rods. Further, awarding of Rs.10,000/- towards pain and suffering is just and reasonable. Thus, in all, the appellant/claimant is entitled to the compensation of Rs.1,54,172/- under the following heads:

1. Loss of earnings for 15% disability	Rs.61,200.00
2. Loss of earnings during treatment Period	Rs.18,000.00
3. Towards medicines	Rs. 35,972.70
4. Towards injuries	Rs. 8,000.00
5. Towards attendant charges	Rs. 1,000.00
6. Transportation charges	Rs. 5,000.00
7. Towards extra nourishment	Rs. 5,000.00
8. Towards future operation	Rs.10,000.00
9. Towards pain & suffering	Rs. 10,000.00
Total	Rs.1,54,172.70

21. By virtue of the policy Ex.B.1 which in force from 4.12.2004 to 3.11.2005, and the accident occurred on 27.03.2005, the second respondent has to indemnify the first respondent.

Hence The first and second respondents are joint and severally liable to the aforesaid compensation.

22. In the result, the appeal is partly allowed with proportionate costs and the Award dated 18.09.2006 passed in MVOP.No.1295 of 2005 by the learned Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Warangal is modified to the extent indicated hereinabove. Consequently, the first and second respondents are jointly and severally liable to pay the total compensation of Rs.1,54,172/- with existing bank interest at 7.5% per annum from the date of claim petition i.e. 24.08.2005 till the date of deposit of the amount.

23. The respondents are directed to deposit the compensation amount, after deducting the amount, if any, already paid/ deposited, within a period of thirty days from today.

24. On such deposit, the appellant/claimant is entitled to withdraw the said amount.

25. Advocate fee is Rs.2,000/-.

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

JUSTICE N. BALAYOGI

DATED 7th JULY, 2017.
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