

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.2201 of 2009

JUDGMENT:

1. The appellant/claimant aggrieved by the Award and decree dated 14.02.2007 passed in O.P.No.492 of 2003 by the learned Chairman, Motor Accident Claims Tribunal-cum-District Judge at Nizamabad preferred the present appeal for the following among other grounds that the Tribunal failed to see that the appellant/claimant suffered grievous injuries and became permanent disable; that the Tribunal should have believed the evidence of P.W.2, the doctor who treated the claimant and placed reliance on Ex. A.3-Wound Certificate; that the Tribunal should have observed that the appellant/claimant underwent surgery and suffered permanent disability at 35% and should have granted compensation of Rs.5,00,000/-.

2. The appellant/claimant further contended that the Tribunal should have granted Rs.2,00,000/- towards two fracture injuries; Rs.1,00,000/- each towards medical expenses, pain & suffering and loss of earnings. The interest awarded by the Tribunal at 7.5% is unsound and untenable.

3. Despite granting ample opportunities, none appeared for the respondents to advance arguments on their behalf.

4. The brief facts of the case are that: on 27.12.2002 when the appellant/claimant was travelling in jeep bearing No. AP.25T.5872, the driver of the said jeep drove at high speed in rash and negligent manner and while overtaking the lorry, dashed it, as a result of which, the appellant/claimant sustained fracture injuries to right forearm both bones, right ankle, head injury, multiple and grievous injuries on various parts of the body.

5. The second respondent filed counter affidavit before the Tribunal stating that there is no rash and negligence on the part of the driver of the jeep; that driver did not drive the jeep in high speed at the time of accident; that the jeep was in fit condition and was having valid permit and fitness certificate and that he did not violate terms and conditions of the policy Ex. A.4.

6. On facts, there is no dispute with regard to the rash and negligence on the part of the driver of the jeep bearing No.AP.25/T.5872 and the injuries sustained by P.W.1/appellant/claimant.

7. The Doctor, P.W.2 is the proper person to speak about the nature of injuries, its grievousness and effect of such injuries.

8. P.W.1 is the claimant and injured, whose evidence is that in the said accident, he sustained fracture injuries on both the hands and face, head and other parts of the body. P.W.2 is the doctor who treated P.W.1 in the Osmania General Hospital. According to him, P.W.1/appellant was admitted in Osmania General Hospital on 28.12.2002. The accident, as per Ex. A.1-FIR, Ex. A.2-Charge Sheet was occurred on 27.12.2002. Ex. A.3 is the Wound Certificate issued by the Medical Officer, Government Civil Hospital, Bodhan, according to which, P.W.1 was admitted in the Hospital at Bodhan on 27.12.2002 and he sustained comminuted fracture shaft of right humerus segmental upper & middle 1/3rd to right arm and also fracture to lateral middle right ankle.

9. The evidence of P.W.1 discloses that immediately after the accident, he was shifted to Government Hospital, Bhodan, Nizamabad District and thereafter shifted to Osmania General Hospital, Hyderabad for better treatment. P.W.2 during the cross examination stated that he do not know whether P.W.1 had any first aid treatment before coming to Osmania General Hospital. The evidence of P.W.2 corroborates the evidence of P.W.1 read with Exs.A.3 and A.6 which makes it clear that immediately after the accident, P.W.1 was shifted to Government Civil Hospital, Bodhan where at Ex. A.3 Wound Certificate was issued and thereafter, for better treatment, he was shifted to

Osmania Genral Hospital and admitted on 28.12.2002 as recorded in Ex. A.6.

10. The consistent evidence of P.W.2 read with Ex. A.6 leaves no room to suspect the admission of P.W.1/claimant in Osmania General Hospital, Hyderabad on 28.12.2002. Further Exs.A.6 and A7 were proved by medical evidence of doctor, P.W.2.

11. Further the consistent evidence of P.W.2 is that P.W.1/claimant was operated by plating of right humerus and nailing of left humerus and was discharged from the hospital on 20.01.2003. For such nailing purpose, P.W.1 purchased implants vide Ex. A.8 invoice dated 06.01.2003 for 2,750/-. After surgery on 7.1.2003, he was discharged from the hospital on 20.01.2003 with an advise to attend as OPD for follow up treatment.

12. The evidence of P.W.2 supported by Ex. A.7 further established that P.W.1/claimant was again admitted in Osmania General Hospital on 26.7.2003 for non union of right humerus fracture. Accordingly bone grafting was performed and discharged from hospital on 14.08.2003 as noted in Ex. A.7. It is also further evident from the evidence of P.Ws.1 and 2 that P.W.1 took treatment privately also. In support of the same, he filed Ex. A.5— Out Patient Ticket issued by the A.P. Vaidya Vidhana Parishad

vide OP.No.4543. The evidence of P.W.2 coupled with Ex. A.6 further goes to suggest that P.W.1 was operated on 7.1.2003 and drain was removed on the second post operation; strictures were removed on the 10th post operated day and wound was healed and on x-rays (Exs. A.10) alignment was found satisfactory.

13. As already stated in the above paras, P.W.1 sustained two fracture injuries (1) Comminuted fracture of shaft humerus upper & middle 1/3rd (Grade I) to right arm and (2) Segmental fracture of shaft humerus middle 1/3rd displaced to left arm. A combined reading of Exs.A.3 and A.6 coupled with evidence of P.Ws.1 and 2 goes to show that besides the above two injuries, P.W.1 also suffered head injuries. The evidence P.W.2 is that before entering into the witness box, he examined P.W.1 and found that fractures have clinically united on both sides, there is limitation of movements in the left elbow joint and there is fixed flexion deformity of above 40 degrees with fracture flexion which is possible up to 90 degrees. The free range of flexion possible only 50 degrees and he (P.W.1) had a permanent disability of 35%. During the cross-examination, P.W.2 admitted the percentage of disability suffered by P.W.1. There is a suggestion to P.W.2 in regard thereto, which was denied that P.W.1 can work normally and that he will become normal by process of time. He further deposed that P.W.1 may be able to do

some work which would not be hard in nature and 35% disability suffered by him is partial and permanent.

14. Though the Tribunal discussed the same in para 21 of its Award, however, could not gave finding with regard to disability, but awarded compensation to the fracture injuries. As already discussed supra, the doctor, P.W.2 is the proper person to speak about the disability suffered by P.W.1. There is no mention in Ex. A.6—discharge card about percentage of disability suffered by P.W.1/claimant. There is a specific mention therein with regard to two injuries suffered by P.W.1/appellant, namely, (1) Comminuted fracture of shaft humerus upper & middle 1/3rd (Grade I) to right arm and (2) Segmental fracture of shaft humerus middle 1/3rd displaced to left arm. As per the evidence of P.W.1 coupled with Ex. A.5, he also sustained head injury. The doctor P.W.2 before entering into the witness box, examined P.W.1 and clarified that fractures have clinically united on both sides, there is limitation of movements in the left elbow joint and there is fixed flexion deformity of above 40 degrees with fracture flexion which is possible up to 90 degrees. The free range of flexion possible was only 50 degrees and he had a permanent disability of about 35%.

15. The evidence of P.W.2 further goes to suggest that P.W.1 underwent surgery for right upper arm twice. For the

removal of implants, P.W.1 has required to undergo another surgery. The evidence of P.W.1 coupled with ocular evidence goes to suggest that prior to the accident, P.W.1 was doing business in submersible pumps and was earning Rs.8,000/- net income per month. After the accident he is not doing any business and unable to go to the villages for the said business and he requires further Rs.20,000/- for the purpose of removal of rods. P.W.2 suggested that P.W.1 needs to undergo another operation for removal of the implants. He was inpatient for about two months which was also accepted by the Tribunal and awarded compensation on account of loss of earnings for the aforesaid period.

16. It is a fact that the corroborated evidence of P.W.1 with P.W.2 coupled with documentary evidence at Exs.A.6,7,8 and 10 goes to suggest that P.W.1 sustained two fractures injuries, namely, (1) Comminuted fracture of shaft humerus upper & middle 1/3rd (Grade I) to right arm and (2) Segmental fracture of shaft humerus middle 1/3rd displaced to left arm. As per Ex. A.6, P.W.1 was admitted in Osmania General Hospital on 28.12.2002. He purchased implants vide Ex. A.8 invoice dated 06.01.2003 for Rs.2,750/- and undergone surgery on 07.01.2003 and discharged from the hospital on 20.01.2003. P.W.2 during his cross examination clearly stated that P.W.1 underwent surgery twice for the fracture of right upper arm. It is also the evidence of

P.W.2 that fractures have clinically united. In Exs.A6 and A7-- discharge tickets, there is no mention about disability. At the time of discharge from the Osmania General Hospital, injury was united and the doctor advised for review of treatment. In Ex. A.6 it is noted in clear words that the wound is healed and on X-rays, the alignment was found satisfactory, which clarifies that there is no any disability particularly permanent in nature. P.W.2 for the first time on oath deposed that there is limitation of movements in left elbow joint and there is fixed flexion deformity of above 40 degrees with fracture flexion which is possible up to 90 degrees and disability is 35%. This evidence do not find place in any documents produced by the appellant/claimant or P.W.2. For the first time, on oath, P.W.2 stated these facts, which are not supported by any documentary evidence. In such circumstances, the Tribunal rightly disallowed the plea of disability and awarded compensation only for the injuries.

17. With regard to the income, age, occupation of P.W.1, the Tribunal based on the oral and documentary evidence available on record came to the right conclusion that the appellant/P.W.1 was aged 22 years as on the date of accident and was able to earn Rs.100/- per day or Rs.3000/- per month by doing any kind of work. In the absence of any rebuttal evidence from the opposite side, the Tribunal based its above finding on the oral evidence of P.W.1. Having considered the material

available on record and in the absence of rebuttal evidence to such findings, the Award of the Tribunal is valid, legal and do not suffer from any legal infirmities warranting interference by this Court to that extent.

18. The Tribunal on discussing the evidence available on record, awarded Rs.50,000/- (*sic*: towards pain and suffering) towards two fracture injuries, Rs.4,899/- towards medical expenses, Rs.10,000/- towards future medical expenses and Rs.6,000/- towards of loss earnings. In total, the Tribunal awarded Rs.70,899/-.

19. However, having considered the corroborated evidence of P.Ws.1 and 2 coupled with documentary evidence in Exs. A.1 to A.10, I find that P.W.1 sustained two injuries namely, , (1) Comminuted fracture of shaft humerus upper & middle 1/3rd (Grade I) to right arm and (2) Segmental fracture of shaft humerus middle 1/3rd displaced to left arm and head injury in the accident involving jeep bearing No. AP.25T 5872 and underwent surgeries twice. It is the evidence of P.W.2 that due to fracture injuries, P.W.1 cannot attend hard works in nature, but he can attend normal works as usual. Injuries namely, (1) Comminuted fracture of shaft humerus upper & middle 1/3rd joint to right arm and (2) Segmental fracture of shaft humerus middle 1/3rd displaced to left arm, are grievous in nature and he cannot

attend hard works, but can attend normal works. Therefore both the fracture injuries are grievous in nature preventing movement of left elbow joint and therefore I felt that it is just and proper to award Rs.65,000/- to each fracture injury. Thus, the appellant/claimant is entitled to Rs.1,30,000/- for the aforesaid two fracture injuries.

20. Accordingly awarding of compensation of Rs.50,000/- to both fracture injuries by the Tribunal is modified while confirming the awarding of other amounts, namely, Rs.4,899/- towards medical expenses, Rs.10,000/- towards future medical expenses, and Rs.6,000/- towards loss of earnings. Besides that, it is also just and reasonable to award an amount of Rs.20,000/- for future surgery, Rs.15,000/- towards pain and suffering, Rs.10,000/- for head injury as stated in Ex. A.5. In all, the appellant/claimant is entitled to be awarded Rs.1,95,899/- which can be rounded at Rs.1,96,000/-.

21. For the foregoing discussion and in the result, the appeal is partly allowed with costs while setting aside/modifying the Award and decree dated 14.02.2007 passed in O.P.No.492 of 2003 by the learned Chairman, Motor Accident Claims Tribunal-cum-District Judge at Nizamabad and compensation of Rs.1,96,000/- is hereby awarded to the appellant/claimant with

interest at 7.5% per annum from the date of the claim petition i.e. 21.04.2003 till the date of deposit of the amount.

22. By virtue of the insurance policy, Ex. A.4 the respondents are joint and severally liable to pay the said compensation and accordingly they shall deposit the compensation amount within 30 days from today, after deducting the amount, if any already paid/deposited.

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

24. Advocate fee is fixed at Rs.2,500/-

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



JUSTICE N. BALAYOGI

DATED 12th JUNE, 2017.
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