

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 272 of 2009

JUDGMENT:

1. The appellant-National Insurance Company Limited preferred this appeal aggrieved by the Award and Decree dated 24.09.2007 passed in OP.No.683 of 2003 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-V Additional District Judge (FTC), Ranga Reddy District, at L.B.Nagar mainly on the grounds that awarding of Rs.50,000/- for fracture injury without disability certificate and medical proof of treatment is illegal and excessive and that the Award of the Tribunal is illegal, irregular and contrary to law.

2. The case of the first respondent/claimant is that on 01.05.2003 at about 1.30 PM while the first respondent/claimant was coming from Yamjal to Injapur on the scooter bearing No. AP 11 G 2389, the Mahindra Max bearing No.AP 28T 183 having driven by its driver with high speed, in rash and negligent manner, hit the scooter, as a result of which, the first respondent/claimant fell down and suffered grievous injuries.

3. Immediately after the accident, the first respondent/claimant was taken to Osmania General Hospital, wherein he was treated from 01.05.2003 to 20.05.2003 as in-patient and for fracture injury, he had undergone an operation and

rod was inserted. He suffered disability and spent Rs.50,000/- towards expenses.

4. The first respondent/claimant was aged 38 years and was earning Rs.7000/- per month. Due to the fracture injury, he could not attend the job from 01.05.2003 to 12.11.2003

5. Before the Tribunal, the appellant/second respondent/Insurance Company contended that the accident took place due to the rash and negligent driving of the scooter by the claimant/first respondent itself. It denied that the first respondent/claimant was earning monthly income of Rs.10,000/-.

6. Based on the pleadings, the Tribunal framed the following issues for settlement.

1. Whether the accident took place on 01.05.2003 at about 1.30 PM at Masqathi Dairy Farm, Injapur on account of the rash and negligent driving of the driver of Mahendra Max bearing No. AP 28T 183 while dashing the scooter, Kinetic Safari bearing No. AP 11 G 2389 ?
2. Whether the petitioner is entitled to claim compensation, and, if so, for how much amount and from which respondents ?
3. To what relief ?

7. In order to prove the respective cases, P.Ws.1 and 2 were examined on behalf of the first respondent/claimant and Exs.A.1 to A.7 were got marked. On behalf of the appellant,

respondents 2 and 3, no witness was examined, however, Ex.B.1 policy was got marked on their behalf.

8. As can be seen from the Memorandum of grounds of appeal, the appellant/Insurance Company does not dispute the findings of the Tribunal regarding rash and negligent driving of the driver of the Mahendra Max bearing No. AP 28T 183.

9. With regard to the injuries, though the first respondent/claimant filed Ex.A.3-Disability Certificate, he did not examine the person who issued Ex.A.3. Further the first respondent/claimant did not examine the doctor who treated him. The evidence of P.W.1/claimant supported by Ex. A.2-Discharge card, Ex.A.5- eight X-ray films and Ex.A.7-Certificate of treatment reveals that he received fracture injury to left foot and also suffered dislocation of left shoulder. He took treatment in Osmania General Hospital as in-patient from 01.05.2003 to 20.05.2003. He also undergone surgery on 2.5.2003 and Femur bone grafting was done on 7.5.2003. It is also the evidence of P.W.1 that as the Doctor was advised him to take rest, he could not attend the job from 01.05.2003 to 12.11.2003. During the said period, there is loss of income for him. However, in the grounds of appeal, the appellant does not dispute the injuries suffered by the first respondent/claimant, and evidence regarding the nature of injuries and their gravity.

10. As discussed supra, there is no discussion about Ex. A.3-disability certificate inasmuch as no person who issued the same was examined. However, having considered the evidence of P.W.1 and Exs.A.2 to A.7, the Tribunal came to the right conclusion that P.W.1/claimant suffered grievous injuries as stated supra.

11. Having considered the material on record and the nature of injuries suffered by P.W.1, the Tribunal rightly awarded Rs.50,000/- towards pain and suffering and Rs.,25,000/- towards the injury of dislocation of left shoulder, which is considered to be just and reasonable.

12. Though the first respondent/claimant filed medical bills under Ex. A.4, since the doctor who treated him was not examined to confront the medical bills and prescriptions, the Tribunal awarded Rs.10,000/- towards medical expenses, which does not warrant interference.

13. Further, the Tribunal did not believe the evidence of P.W.1 that he was earning Rs.7,000/- per month on the ground that concerned authority/employer was not examined to prove the same. However, considering Ex.A.6-salary certificate which reveals that he was drawing Rs.3,680/-, and as the first respondent/claimant was bed-ridden for six months, the Tribunal awarded Rs.22,080/- @ Rs.3,680/- per month towards loss of

income for six months, which is also legal and do not warrant interference.

14. Further, the Tribunal considering that the first respondent/claimant engaged transport due to the fracture of left leg to attend the hospital for treatment, awarded Rs.2,000/- towards transport charges and Rs.5,000/- towards extra-nourishment, which is also just and reasonable.

15. With regard to the rate of interest, the Tribunal relying on the decision of the Apex Court in TAMILNADU TRANSPORT CORPORATION Vs. S.RAJA PRIYA {2005 (4) ALT 14}, rightly awarded interest at 7.5% per annum.

16. For the foregoing discussion and in the result, the impugned Award of the Tribunal is legal, valid and do not suffer from any legal infirmities warranting interference.

17. Accordingly the Appeal is dismissed while confirming the Award and decree dated 24.09.2007 passed in OP.No.683 of 2003 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-V Additional District Judge (FTC), Ranga Reddy District, at L.B.Nagar.

18. The appellant-Insurance Company and Respondents 2 and 3 are directed to deposit the compensation awarded by the Tribunal, after adjusting the amount if any already paid/deposited,

within one month from the date of receipt of a copy of this judgment.

19. On such deposit, the first respondent/claimant is entitled to withdraw the same.

20. Advocate fee is fixed at Rs.2,000/-.

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

DATED 26th October 2017.
Msnr_x



JUSTICE N. BALAYOGI