

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 1315 of 2009

JUDGMENT:

1. The appellant/claimant, aggrieved by the Award and decree dated 30.01.2009 passed in O.P.No.558 of 2007 by the learned Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar, preferred this appeal contending that the Tribunal did not appreciate the oral and documentary evidence in proper perspective manner and ought to have considered the loss of earnings, special damages in the absence of rebuttal evidence. It is also contended that the Tribunal also erred in not taking the income of the appellant/claimant at Rs.4,000/- per month and ought to have awarded compensation as claimed. It is further contended that the multiplier applied by the Tribunal is contrary to the settled law.

2. Brief facts of the case of the appellant/claimant are that on 15.01.2007 while the appellant/claimant along with another Purella Srinivas going on their scooter bearing registration No. AHS 4502 and when they reached near main road, a lorry bearing No. AP 24 W 3976 being driven in rash and negligent manner and at high speed, dashed the scooter, as a result of which, the appellant/claimant fell down and sustained crush injury to his right leg, which was amputated below the knee and permanently disabled. He also sustained large diglowning injury on dorsum of

right foot, extending up to medial aspect, digloring injury on the right calf, digloring on anterior aspect of right leg which broken end of tibia protruding out and fracture of both bones of right leg.

3. The second respondent-Insurance Company contended that the claim petition is liable to be dismissed for non joinder of necessary parties and there is composite negligence on the part of the rider of the scooter also.

4. To substantiate the claim, the claimant himself was examined as P.W.1 and one B.Parsharamulu was examined as P.W.2 and Exs.A.1 to A.10 were got marked on his behalf. The respondents having taken plea of composite negligence on the part of the driver of the offending lorry did not choose to enter into witness box and depose the facts to their knowledge.

5. The Tribunal considered the evidence of P.W.1, and direct & material witness--P.W.2-B.Parsharamulu who was running a hotel at Chinna Kalvala. The evidence of P.W.1 is that at the time of accident, P. Srinivas was riding the scooter bearing No. AHS 4502 and he was the pillion rider on the said scooter. When the scooter reached the main road, lorry bearing No.AP 24 W 3976, being driven at high speed, in a rash and negligent manner, dashed the scooter. The evidence of P.W.2 is that he was running a hotel at the accident spot and at the time of accident at around 1.00 PM while he was preparing tea in his hotel, and noticed a lorry proceeding from Godavarikhani to

Karimnagar in high speed and the said lorry dashed the chetak scooter from its behind and proceeded ahead. Then he stopped one auto and sent the injured to the hospital. The accident was due to rash and negligent driving of the driver of lorry bearing No. AP 24W 3976.

6. During the cross examination, P.W.2 clearly stated that his tea stall is near by the place of accident. There is no suggestion to P.W.2 suspecting his presence at the accident spot. Hence there is no piece of evidence or atleast any suggestion to P.W.2 to support the claimant case and discard his evidence.

7. The Tribunal having considered the oral and corroborative evidence of P.Ws.1 and 2 and documentary evidence at Ex. A.1-Copy of FIR wherein finding of offending lorry was specifically asserted as AP 24W 3976 and also the manner in which accident occurred was clearly stated. The Investigating Officer after thorough investigation found and filed Ex. A.2—charge sheet that on account of the rash and negligent driving of the lorry bearing No. AP 24W 3976 by its driver, the accident occurred. Having considered the same, the Tribunal came to the conclusion that accident occurred due to rash and negligent driving of the lorry bearing No. AP 24W 3976 by its driver.

8. The respondents having taken the plea that there is composite negligence on the part of the rider of the scooter also did not choose to adduce any oral or documentary evidence. In

the absence of any such rebuttal evidence, the Tribunal having marshaled the facts and considered categorically the evidence of P.Ws.1 and 2 and documentary evidence at Exs.A.1 and A.2, came to the right conclusion that the accident was due to the rash and negligent driving of the lorry bearing No. AP 24 W 3976 by its driver and further that there is no evidence to prove composite negligence on the part of the rider of the scooter. The findings of the Tribunal are legal, valid and supported by both oral and documentary evidence and therefore do not suffer from legal infirmities warranting interference with the same.

9. The doctor who examined P.W.1 in the hospital was admittedly not examined; still there is evidence of P.W.1 and documentary evidence under Ex.A.3-Wound Certificate, Ex.A.5-Discharge Card of Nizam Institute of Medical Sciences, Hyderabad, Exs.A.8 and A.9 bunch of medical bills and Ex. A.10-Investigating Reports. The evidence of P.W.1 is that immediately after the accident he was admitted in the Government District Headquarters Hospital, Karimnagar and there from, he was referred to Nizam Institute of Medical Sciences, Hyderabad wherein he underwent surgery on 16.01.2007 and discharged on 5.2.2007 at his own request and he was bedridden for six months. He suffered permanent disability to the right leg owing to the amputation below knee and unable to attend his duties.

10. Ex.A.3 is the Wound Certificate issued by Nizam Institute of Medical Sciences, according to which, P.W.1 suffered 1) Large diglowning injury on dorsum of right foot, extending up to medial aspect, 2) diglowning injury on the right calf, 3) diglowning on anterior aspect of right leg which broken end of tibia protruding out and 4) fracture of both bones of right leg. Ex.A.3 further goes to suggest that P.W.1 was examined by doctor on 16.01.2007. Ex. A.5-Discharge Card shows that P.W.1 was admitted in the hospital on 16.01.2007, discharged on 5.2.2007 and amputation of right leg below knee was done by conducting surgery.

11. The Tribunal having considered the oral and documentary evidence came to the conclusion that the doctor who treated P.W.1 in the NIMS was not examined since because NIMS is a premier institution running under the supervision of the Government and it is an autonomous University and therefore non examination of the doctor is not fatal to the case. Further the appellant/claimant has taken steps to summon the doctor for the purpose of leading evidence with regard to treatment and amputation of right leg, but could not examined. However, the evidence of P.W.1 and documentary evidence at Ex. A.5 well established that the appellant/claimant 's right leg was amputated below knee and disability was assessed at 40%. There is no rebuttal evidence to the evidence of P.W.1 and documentary evidence at Ex.A.5 and hence the finding and conclusion of the Tribunal are legal and do not suffer from legal infirmities.

12. Except the oral evidence of P.W.1 and documentary evidence at Exs.A.3 and A5 there is no other evidence to show that the claimant was aged 24 years as on the date of accident. The Tribunal having considered the age mentioned therein and oral evidence of P.W.1 and documentary evidence at Exs. A.3 and A.5 and there being no rebuttal evidence to disprove the age of the claimant, came to the conclusion that the appellant/claimant was aged 24 years as on the date of accident.

13. Ex. A.6 is the bunch of 43 medical bills for Rs.25,573/- representing purchase of medicines and payment of investigation charges. The final bill at Ex. A.6 goes to suggest payment of Rs.12,965/-. The Tribunal discussed with regard to refund of money and took into consideration the finding that the appellant/claimant submitted refund application on 11.03.2008 and that total charged amount was Rs.39,836/-, out of which a sum of Rs.26,871/- was refunded and a sum of Rs.12,965/- alone was charged from the appellant/claimant by the NIMS. Ex. A.7 is the Certificate issued by the NIMS. In such circumstances, having considered that the appellant/claimant incurred expenditure of Rs.25,573.50Ps towards medical expenses, awarded the said amount, which is perfectly valid.

14. Admittedly the appellant/claimant has not produced any proof that he worked as Kalasi in the rice mill or Hamali at Pedda Kalvala. The Tribunal awarded only Rs.12,000/-

(Rs.2,000/- x 6 months) towards loss of income during the period of treatment. Having considered the age of the injured/claimant as 24 years, taking into consideration the minimum wages, the monthly income of the appellant/claimant can be fixed at Rs.,4,000/-. Hence, the appellant/claimant is entitled to be awarded Rs.4,000/- x 6 months = Rs.24,000/- towards loss of income during the treatment period.

15. Since the appellant/claimant's right leg was amputated below knee, the disability suffered by him was assessed at 40%. The same is not disputed by the respondents by adducing any rebuttal evidence. As per the decision of the Apex Court in *SARALA VARMA Vs. DELHI TRANSPORT CORPORATION* {(2009) 6 SCC 121, the proper multiplier applicable for the age of the appellant/claimant at 24 years is '18'. As stated supra, the monthly income of the appellant/claimant was fixed at Rs.4,000/- per month, out of which, 50% has to be deducted towards his personal expenses he being a bachelor. The balance comes to Rs.2,000/- per month or Rs.24,000/- per annum. Therefore the total loss of future earning capacity of the appellant/claimant for 40% disability can be asessed at Rs.24,000 x 18 x 40% = Rs.1,72,800/-.

16. The Tribunal awarded Rs.10,000/- towards extra nourishment, Rs.5000/-towards transport charges and Rs.20,000/- towards pain and suffering. Having considered the nature of

injuries suffered by the appellant/claimant, awarding of compensation under the aforesaid heads is just and reasonable and does not warrant any interference.

17. Thus, in all, the appellant/claimant is entitled to receive the compensation of Rs.2,81,373/- as under:

1.Loss of future earning capacity:	Rs. 1,72,800.00
2. Extra Nourishment charges	Rs. 10,000.00
3. Transport charges	Rs. 5,000.00
4. Pain and suffering	Rs. 20,000.00
5. Loss of income during treatment	Rs. 48,000.00
6. Purchase of medicines and payment of investigation charges	Rs. 25,573.50
Total	Rs. 2,81,373.50 Ps

18. The first respondent being the owner of the offending lorry bearing No.AP 24 W 3976 and the second respondent being its insurer, are jointly and severally liable to pay the said compensation.

19. In the result, the appeal is partly allowed with proportionate costs and the Award and decree dated 30.01.2009 passed in O.P.No. 558 of 2007 by the learned Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge,

Karimnagar 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.2,81,373/- with existing bank interest at 7.5% per annum from the date of claim petition i.e. 24.09.2007 till the date of deposit of the amount.

20. The respondents are directed to deposit the compensation amount awarded hereinabove, after deducting the amount, if any, already paid/ deposited, within a period of thirty days from the date of receipt of a copy of this order.

21. On such deposit, the appellant/claimant is permitted to withdraw the said amount.

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

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

JUSTICE N. BALAYOGI

DATED 14th JULY, 2017.
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