

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.2603 of 2009

Date:06.06.2017

Between:

Yemineni Siva Nageswara Rao

... Petitioner.

And

Zakir Hussain Shaik and another.

... Respondents



THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.2603 of 2009

JUDGMENT:

The appellant-claimant, aggrieved by the award of the Motor Accidents Claims Tribunal-cum-XI Additional District Judge (FTC), Guntur at Tenali in MVOP.No.1375 of 2007, dated 20-03-2009, preferred this appeal besides other grounds on the ground that there is no negligence on the part of the claimant in giving report even then the respondents did not produce any evidence to deny the accident. The Tribunal erred in holding the delay in registering FIR is not a ground to deny the claim of the appellant.

2. The Tribunal, having gave a finding in favour of the appellant for assessment of claim amount, failed to pass an award though P.W.2 deposed the disability is 10%, the Tribunal did not award any compensation for disability. The amount awarded is meager warrants interference.

3. Heard the learned counsel for the appellant and learned counsel for the respondents.

4. The second respondent contended that the vehicle was not insured with the Insurance Company and the driver was not having valid and effective driving licence at the time of accident, thereby violated the terms and conditions of the policy. The Tribunal well appreciated the evidence and marshalling the facts dismissed the petition with costs holding that it is highly doubtful as in fact the vehicle in question was involved in the accident, there is delay in giving FIR, the petitioner must be treated as 50 years old. Now there

is no proof of actual income even by applying multiplier '11', he would get Rs.16,500/- and even if it is liberally considered, as sum of Rs.20,000/- would be granted towards permanent disability and the maximum amount could be awarded is Rs.25,000/- towards permanent disability and would be granted another amount of Rs.6,000/- towards loss of income and essential expenses during treatment, a total compensation would be Rs.61,000/- as the vehicle of the first respondent was not involved in the accident.

5. Admittedly, the petitioner examined P.Ws.1 to 3 and marked Exs.A1 to A5 and Ex.X-1, but no oral or documentary evidence adduced on behalf of the respondents.

6. The learned counsel for the respondents contended that there is abnormal delay in registering the F.I.R., which was not properly explained. In Ex.X-1-Case Sheet, the history of the case was noted as *"alleged have injured due to hit by a car while he was sitting on a standing bicycle at about 2:00 P.M., on 18-08-2007 near Arumbaka Village of Cherukupalli Mandal"*, whereas the evidence on oath was that the petitioner was hit by a goods carrying auto. Hence, there is discrepancy with regard to involvement of the offending vehicle bearing No.AP 7 TU 2341 and also there is no concrete evidence with regard to age and income of the deceased.

7. The claimant-appellant was examined as P.W.1 whose evidence is that on 18-08-2007, at about 1:30 P.M., while he and his own brother Subrahmanyam were returning from Cherukupalli on bicycles and reached crossroads of Arumbaka Village, white coloured Mahindra Goods Carrier bearing No.AP 7 TU 2341 came in opposite direction. At the time he was peddling bicycle (riding) on left side of

the road, the driver drove the vehicle in a rash and negligent manner with high speed without blowing horn and hit him. The respondents are mostly relying on Ex.X1-Case Sheet, wherein the history of the case, the concerned recorded as *“alleged have been injured due to hit by car while he was standing on bicycle at about 2:00 P.M., on 18-08-2007 near Arumbaka Village of Cherukupalli Mandal”*. It is also noted in the case sheet that patient was brought by his wife Poornamma. Ex.A2 is the FIR, which was registered basing on the statement of P.W.1 recorded by the Head Constable on 19-08-2007 at 11:00 A.M., at Peoples Trauma Emergency Hospital at Guntur, Old Club Raod, Kothapeta. Against Column No.12 of Ex.A2-FIR, it was also recorded that on 19-08-2007 at 7:00 P.M., received one hospital admission intimation and statement of Y. Siva Nageswara Rao was recorded.

8. P.W.3 is the Doctor-Orthopedic Surgeon at Peoples Trauma Emergency Hospital at Guntur and his evidence is that on 18-08-2007, Y. Siva Nageswrara Rao admitted the patient in the hospital with injuries sustained in a motor vehicle accident on 18-08-2007 and Ex.X-1 is the case sheet maintained. But coming to Ex.A2, statement, P.W.1 clearly asserted that on 18-08-2007, at About 1: 30 P.M., he along with his brother were returning to their village and when reached Arumbaka Cross-road, when Mahindra Goods Carrier motor vehicle white in colour bearing No.AP 7 TU 2341 came in opposite direction with high speed in a rash and negligent manner and dashed him. The Investigating Officer, after thorough investigation filed Ex.A4-Charge sheet along with the hospital intimation and wherein it was clearly stated that on receipt of the hospital intimation, the Head Constable rushed to the Hospital and recorded the statement of P.W.1. Ex.X-1-Case Sheet also shows

sending intimation to the Hospital at 7:00 P.M., on 18-08-2007 itself, but the Head Constable recorded the statement of P.W.1 on the next day i.e., on 19-08-2007 at 11:00 A.M., the lapse is on the police in recording the statement on 19-08-2007 at 11:00 A.M., though he received the intimation on 7:00 P.M., on 18-08-2007 itself.

9. The proof of criminal case is different from a proof in civil suit. In criminal case, the prosecution has to prove the guilt of the accused beyond all reasonable doubt, whereas in civil suit, the party has to adduce evidence and prove the profunder of probabilities.

10. The wound certificate-Ex.A3 itself shows that P.W.1 was accompanied by his wife Poornamma and P.W.2 examined him at 7:00 P.M., on 18-08-2007 and admitted P.W.1 on 18-08-2007 itself. The evidence of P.Ws.1 & 3 corroborated and supported by Exs.A2 & A3 and Ex.X-1-Case Sheet goes to suggest that soon after the accident, the wife of P.W.1 shifted the injured to the Government Hospital on 18-08-2007 at 7:00 P.M and the Doctor first seen P.W.1 and commenced the treatment, which facts were recorded in Ex.X-1. Immediately, the intimation was sent to the police on 18-08-2007 itself, but the police recorded the statement of P.W.1 on 19-08-2007 at 11:00 A.M., which is the basis for registration of FIR. In the evidence as well as in Ex.A1-Medical Record and Prescriptions and Charge Sheet under Ex.A4, the claimant clearly asserted the involvement of the vehicle bearing No.AP 7 TU 2341 in the accident. Though P.W.1 was cross-examined at length, there is no even a suggestion to P.W.1 that vehicle bearing No.AP 7 TU 2341 was not at all involved. The only suggestion to P.W.1 is that there is no negligence on the part of the driver of the first respondent and the

driver did not possess valid and effective driving licence at the time of accident.

11. In the absence of any such rebuttal or even any suggestion to P.W.1, I find that the finding of the Tribunal that there is a doubt with regard to involvement of the offending vehicle bearing No.AP 7 TU 2341 is untenable particularly in view of the consistent and corroborating evidence of P.W.1 surrounded by Exs.A1 & A3 and Ex.X-1, wherein the offending vehicle bearing No.AP 7 TU 2341 clearly asserted.

12. More so, there is a contention of the respondents that in the Ex.X1-Cashe Sheet, it was recorded that while P.W.1 sitting on a standing bicycle, the accident occurred, whereas in the evidence P.W.1 stated that while he was peddling bicycle, the offending vehicle came in opposite direction and dashed. The medial record-Ex.A-1 is only in proof of treatment and the Doctor records the gist of the information therein, which does not disclose to the informant. Therefore, it has no basis. Particularly, when the evidence of P.W.1 corroborated with P.W.2, Ex.A2 to A4 clinches the issue that while P.W.1 peddling bicycle on the left side of the road, the offending vehicle came in opposite direction and dashed P.W.1. The negligence on the part of the driver of the offending vehicle is consistently proved and there is no rebuttal evidence to the evidence of P.W.1, Exs.A2 & A3 and Ex.X-1.

13. In the absence of any such rebuttal evidence, I find that evidence of P.W.1 supported by Exs.A2 to A5 clinchingly proved the negligence on the part of the driver of the offending vehicle bearing No.AP 7 TU 2341 and the petitioner proved the negligence on the part

of the vehicle and involvement of the vehicle bearing No.AP 7 TU 2341, while P.W.1 was peddling the bicycle and when reached Arumbaka Cross-road.

14. The evidence of P.W.1 is that when he peddling the bicycle, an vehicle bearing No.AP 7 TU 2341 came in opposite direction with high speed and dashed him and he fell down and sustained the fracture of left lower leg besides receiving injuries to stomach left side bones and due to the injuries, he suffered serious mental and physical pain and shock and not in a position to walk and caused permanent disability to the left leg, which was completely damaged. The Doctor is the proper person to speak about the injuries. Ex.X1 is the Case Sheet, Ex.A1 is the Medical record and prescriptions and Ex.A3 is the wound certificate.

15. P.W.3 is the Doctor, who treated P.W.1 in the hospital. According to P.W.3, the injured P.W.1 sustained fracture of both bones of left leg and injury to the ribcage and he was undergone surgery on 24-08-2007 by a wound deferment and closed the interlocking nails for the fractures shaft of the left tibia and discharged on 28-08-2007. Accordingly, he was in hospital as in patient for 11 days. He speaks that there is restriction of left knee joint movement and in his opinion, the disability would be at 10%. As already discussed above, the Doctor, who treated P.W.1 in the hospital is a proper person and his evidence is supported by Ex.A3-Wound Certificate and Ex.X1-Case Sheet goes to suggest that there is fracture of both bones of the left leg and the disability is 10%. There is restriction of left knee joint movement. Admittedly, except the oral evidence of P.W.1, no document is filed in proof of age of the

deceased. In Ex.X1 as per the intimation, age of the deceased was noted as 50 years. In Ex.A5 hospital intimation was also noted as 50 years. In Ex.A3-woond certificate, the age of the deceased was noted as 50 years. In Ex.A2-FIR, as per the statement of P.W.1, the age of the injured was recorded as 40 years. The only suggestion to P.W.1 that he is more than 60 years that no document is produced. In the absence of any such proof of age, he considered the age noted in Exs.A3 & A5 and Ex.X1 according to which, the deceased was 50 years.

16. He incurred expenditure for treatment at Guntur. After discharge also, he incurred expenditure for medicines and treatment. His left leg was completely and hopelessly damaged and disability is permanent. P.W.2 is the Manager of Peoples' Truma Emergency Hospital, Guntur and as per the summons, he produced Ex.X1-Case Sheet and the hospital expenditure bill amount is Rs.24,000/- as per the medical bills under Ex.X1 issued by the medical shop situated in their hospital. According to final bill, the amount incurred is Rs.24,000/- towards treatment and medicines in the hospital for which the petitioner is entitled to be awarded Rs.24,000/- and accordingly I award Rs.24,000/- besides that I also award Rs.6,000/- towards loss of incidental medical expenses and Rs.10,000/- towards pain and suffering. Therefore, the petitioner is entitled to a total amount of Rs.40,000/- towards treatment and medicines.

17. The petitioner also did not produce any proof of income. There would not be any proof for agriculture income and according to which P.W.1 is receiving Rs.150/- per day as an agricultural cooli. The cross-examination of P.W.1 is that he is not earning Rs.150/- per

day. Taking into consideration the age of the deceased at 50 years as an agricultural labour and also the fact that throughout the year, there would not be any agricultural operations and there would be three or four months agricultural works in any of a village in a year. Considering the cost of living and the minimum wages, I find that monthly income of the agricultural cooli can be taken at Rs.3,000/- per month.

18. Relying on the decision of Hon'ble Supreme Court reported in **Sarla Verma and others v. Delhi Transport Corporation and another**¹, the relevant multiplier indicated is '13' and the disability is at 10% as the petitioner is unable to attend labour works. Hence a sum of Rs.4,68,000/- (Rs.3,000/- x 12 x '13') would be the net loss of annual income and 10% of which comes to Rs.46,800/-. Hence he is entitled to be awarded Rs.46,800/- towards loss of income and in total, the petitioner-claimant is awarded (Rs.46,800/- + 40,000/-)= 86,800/-.

19. Accordingly, the appeal is partly allowed with proportionate costs while setting aside the order of the award of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Vizianagaram in MVOP.No.105 of 2003, dated 20-02-2007 and awarded a total compensation of Rs.86,800/- with subsequent interest at the rate of 7.5% per annum from the date of petition dated 12.10.2007 till the date of award against respondents 1 & 2 which shall be deposited by the respondents within a month from the date

¹ (2009 ACJ 1298)

of the receipt of a copy of this judgment, after adjusting the amount, if any, already paid/deposited.

20. On such deposit the petitioner-claimant is permitted to withdraw the amount. No costs.

21. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

Date:06.06.2017

mrh

JUSTICE N. BALAYOGI



