

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.701 of 2009

Date: .06.2017

Between:

Thirunagari Govind

... Appellant/Petitioner.

And

The New India Assurance Co.Ltd.,
Rep by its Divisional Manager,
Division Office at APSFC Office,
Nizamabad and another.

... Respondents



THE HON'BLE SRI JUSTICE N. BALAYOGI**MACMA No.701 of 2009****JUDGMENT:**

The appellant-claimant aggrieved by the Judgment of the Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Nizamabad, dated 10-04-2007 in O.P.No.522 of 2003 preferred this appeal besides other grounds on the grounds that the Tribunal erred in considering evidence of P.Ws.1 & 2 and Exs.A3 to A7 while awarding compensation.

2. Further, the Tribunal ought to have considered the loss of salary under future promotion during the treatment and also failed to grant compensation for injuries and consider expenditure towards transportation, extra-nourishment and future treatment.

3. The brief facts of the claim petition are that the claimant while working as A.S.I., by the date of the accident, performing vehicle checking duties at N.T.R Chowrasta, Nizamabad, a motor cycle, bearing No.AP 25 H 3306, came with high speed in a rash and negligent manner and dashed him and including others.

4. In the accident, claimant sustained fracture to skull bone, left foot bones and other multiple simple and grievous injuries on the head, hands, back, chest and other parts of the body. He was in patient from 04-11-2002 to 07-11-2002.

5. The contention of the first respondent-insurance company is that the rider of the motor cycle has no effective and valid driving licence at the time of accident. The Tribunal well considered both oral and documentary evidence and awarded the compensation, which is legal valid and do not suffer with any legal infirmities.

6. The appeal which is preferred by the claimant himself was examined as P.W.1 and there is no dispute with regard to the issue of rash and negligent driving. The Tribunal, having considered the evidence of P.W.1, documentary evidence under Ex.A1-FIR and Ex.A2-charge sheet, came to the conclusion that the accident was due to rash and negligent driving of the driver of the vehicle bearing No.AP 25 H 3306.

7. With regard to the nature and gravity of the injuries, there is evidence of P.W.1 and Doctor-P.W.2 besides medical record under Exs.A3 to A7 and Ex.X-1-case sheet.

8. The consistent evidence of P.W.1 is that immediately, after the accident, he was shifted to the Government Hospital, Nizamabad, which issued Ex.A3-wound certificate. According to which the claimant sustained; (1) fracture of nasal bone, (2) fracture of left foot bone; and (3) abrasion of left fore arm, it also reveals that an x-ray was taken with I.P.No.17267.

9. P.W.2 is the Doctor, who treated P.W.1 in Amrutha Laxmi Multi Specialty Hospital, Khaleelwadi, Nizamabad. According to him, P.W.1 was found (1) swelling and bleeding of the nose, an xray was obtained and shows fracture of nasal bone; (2) an abrasion over the left great toe measuring 4 x 3 cms and according to him, the injury No.1 is grievous in nature and other injuries are in simple in nature. Ex.X1 is the case sheet and Ex.A4 is the discharge summary, whereas Ex.A5 are the medical bills and Ex.A6 is the prescription & lab reports. In Ex.A4, the discharge summary also mentioned that the fracture to the nasal bone and abrasion to the left foot complain giddiness. Exs.A4 & A5 shows that P.W.1 was admitted in Amrutha Laxmi Multi Specialty Hospital, Nizamabad on 04-11-2002 and

discharged on 07-11-2002. The medical bills under Ex.A5 are supported by evidence of Doctor-P.W.2.

10. Therefore, the evidence of P.W.1 corroborated with P.W.2 and supported by Exs.A3 to A7 and Ex.X1 shows fracture of nasal bone and abrasion to the left foot. The Injury No.1 i.e., fracture to the nasal bone is grievous in nature and other injuries are simple in nature. According to P.Ws.1 & 2, claimant sustained one grievous injury and two simple injuries. A reading of the award goes to suggest that the Tribunal well considered both oral and documentary evidence of P.W.2 and Ex.A1-FIR and Ex.X1, came to the right conclusion that P.W.1 sustained only one grievous injury and one simple injury. Hence, the contention of the appellant-claimant that the trial Court erred in considering the evidence of P.Ws.1 & 2 and failed to consider Exs.A1 & X1 had no legs of stand.

11. The medical evidence of Doctor-P.W.2 corroborated with evidence of P.W.1 and supported by Exs.A4 to A7 and Ex.X1 goes to suggest that the claimant was in-patient only for four days i.e., from 04-11-2002 to 07-11-2002. Hence there is no question of loss of future promotion due to the injuries. In the absence of any such convincing evidence, I find that the Tribunal has rightly come to the conclusion that there is no loss of future promotion and loss of income.

12. However, considering the material on record and nature of the injuries and it's gravity, I find that the Tribunal erred, while granting compensation of Rs.5,000/- to the fracture of nasal bone and another Rs.1,000/- to the simple injury i.e., to the left foot, which required modification.

13. Since P.W.1 sustained fracture to the nasal bone and other simple injuries, there is no need for any future treatment and expenses. Hence the Tribunal rightly decided the same. Towards medical expenses, the Tribunal awarded the total amount under Ex.A5-bills even though P.W.1 deposed that he incurred an expenditure of Rs.1,00,000/- for treatment since has not substantiated by producing any evidence.

14. Accordingly, the appeal is allowed by modifying the award and awarding Rs.30,000/- to the fracture of nasal bone and Rs.5,000/- towards injury to the left foot besides that I also award Rs.10,000/- towards pain and suffering, Rs.1,000/- for transportation, Rs.5,000/- towards extra nourishment, Rs.1,000/- for damage to the clothing. In total, the claimant is entitled to Rs.52,000/- while confirming the other amounts awarding interest at 7.5% per annum on the said amount from the date of petition i.e., on 13-04-2003 till the date of deposit, which shall be deposited by second respondent, after adjusting the amount already paid/deposited within 30 days from the date of this order.

13. On such deposit, the petitioner-claimant is permitted to withdraw the same.

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

15. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of. No costs.

Date: -06-2017.
mrbb

JUSTICE N. BALAYOGI

