

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.1475 of 2009

Date: -06-2017

Between:

Domana Appalanaidu

... Petitioner.

And

Theeda Prasadaraao and another.

... Respondents



THE HON'BLE SRI JUSTICE N. BALAYOGI**MACMA No.1475 of 2009****JUDGMENT:**

The appellant-claimant, aggrieved by the award of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Vizianagaram in MVOP.No.105 of 2003, dated 20-02-2007, preferred this appeal besides other grounds on the ground that the Tribunal, having come to the conclusion that the accident was due to rash and negligent driving of the offending vehicle and the appellant sustained injuries on his eyebrow, upper lip, left hand between thumb and index finger and he is experiencing pain and unable to attend the work and loss of earning capacity, the Tribunal awarded only meager amount of Rs.5,000/- against the claim of Rs.1,00,000/-.

2. The respondent, having filed vakalat, did not advance any arguments.

3. The case of the appellant in brief is that on 20-06-2002, while the claimant was travelling in an auto bearing No.AP 30T 7215 and when reached near Budumuru Village, at about 10:30 hours, the first respondent driver-cum-owner of the said auto drove with high speed in a rash and negligent manner and caused the accident. He sustained injuries on his eyebrow, upper lip, left hand between thumb and index finger and took treatment in Government Hospital.

4. This is an appeal questioning the quantum of award. P.W.1 is the claimant and injured in the accident occurred on 20-06-2002 involving auto bearing No.AP 30T 7215 for which the first respondent is driver-cum-owner and second respondent is the insured.

5. P.W.2 is the Doctor, who attended on P.W.1 in the Government Headquarters Hospital, Srikakulam. There is no discrepancy with regard to the fact which is corroborated, but the consistent and corroborative evidence of P.W.1 is that he sustained injuries on his eyebrow, upper lip, left hand between thumb and index finger for which Ex.X2-Xray was taken. The Doctor who treated P.W.1 in the Government Hospital is the proper person to speak about the nature and gravity of the injuries. In the Chief Examination itself, P.W.2 stated that even though P.W.1 received grievous injury in between left thumb and index finger, due to non-fracture and non-bone injury, disability certificate was not given to the patient-P.W.1. During cross-examination, P.W.2 admits that there is no bone injury. Further in the Chief Examination, P.W.2 specifically stated that the injuries are unidimal in nature and subsequently, it became normal limits. Hence there is no disability has spoken by P.W.2 and also deposed that the injury between thumb and index finger is partial and permanent disability. Absolutely, there is no oral and documentary evidence showing any disability particularly permanent in nature.

6. The Tribunal, having considered the ocular evidence of P.W.1 read with medical evidence of Doctor-P.W.2 supported with Ex.A2-wound certificate and also the Xray under Ex.X2, came to the conclusion that the claimant sustained four fractures and the Doctor, after taking Xray, found no injury and thereby opined that the injuries are in simple in nature.

7. Further, the evidence of P.Ws.1 & 2 corroborated and supported by Ex.X-1-Case Sheet goes to suggest that P.W.1 was hospitalized from 20-06-2002 to 27-06-2002 and the treatment in

the Government Hospital is free of cost and most of the medicines were supplied by the Government and some medicines, which are not available in the hospital were purchased by the claimant from outside. Having considered that there is no bone injury and no iota of evidence or material on record showing any disability particularly permanent, the Tribunal did not award any amount towards permanent disability, but awarded only Rs.4,000/- towards three injuries one of which is grievous, which is meager and warrant interference and required modification.

8. The petitioner claimed Rs.15,000/- towards transportation, medicines and extra nourishment. The Tribunal considered the oral evidence of P.W.1 that some amount towards medicines which is also corroborated by the Doctor-P.W.2 as he did not file any medical bills to that effect, the Tribunal having considered the nature of injuries and treatment in the Government Hospital for one week and taking into consideration the circumstances, awarded Rs.500/- towards transportation and extra nourishment and medicines, which is very meager and warrant to modify.

9. The evidence of Doctor-P.W.2 corroborated with P.W.1 supported by Ex.A2-wound certificate and Ex.A2 established that P.W.1 sustained injuries; (1) contusion over right eyebrow, (2) Swelling upper lip abrasion, (3) a lacerated injury over left hand between thumb and index finger, (4) a crush injury over by right little finger and (5) Xray to the right little finger shows no bone injury and those injuries are simple in nature, but P.W.2, the Doctor deposed that the said crush injury is in grievous nature accordingly P.W.1 sustained three simple injuries and one grievous injury. He was hospitalized as in patient from 20-06-2002 to 27-02-2002 for a

period of seven days and some of the medicines, which are not available in the Government Hospital were purchased by the petitioner-claimant.

10. Ex.X-1 and Ex.A2 supported by evidence of P.W.1 shows the above injuries are:-

- “(1) contusion over right eyebrow;*
- (2) Swelling upper lip abrasion;*
- (3) a lacerated injury over left hand between thumb and index finger;*
- (4) a crush injury over a right little finger and*
- (5) xray to the right little finger.”*

Accordingly, I award of Rs.3,000/- to each simple injury and Rs.5,000/- to the grievous injury, in total, awarded Rs.14,000/- towards compensation for the injuries. Accordingly, the amount of Rs.4,000/- awarded by the Tribunal towards compensation for the injuries is modified and I hereby award Rs.14,000/-.

11. Naturally, when an accident took place, the injured would be shifted to the Government Hospital either in 108 Ambulance or any private vehicle. But in this case as per Ex.A1-FIR, the injured was shifted to the Government Hospital in an auto. Hence there is some extent of amount incurred by the petitioner towards transportation for which I award Rs.1,000/- (One Thousand Rupees Only).

12. The evidence of P.Ws.1 & 2 is that he purchased medicines from outside, which are not available in Government Hospital on the prescription of Doctors in the Government Hospital. Admittedly, P.W.1 did not file any medical bills in proof of purchase of medicines. But having considered the injuries sustained by P.W.1 in the accident and also admitted as in patient for seven days, I feel that

circumstances warrant awarding Rs.5,000/- towards medicines and another amount of Rs.3,000/- towards extra-nourishment and another amount of Rs.3,000/- towards pain and suffering. In total, the claimant is entitled to an amount of Rs.11,000/- towards medicines, extra nourishment and pain and sufferings. But the Tribunal awarded only Rs.5,000/- which is very meager and not reasonable. Accordingly, the compensation awarded towards extra nourishment and pain and suffering was modified and enhanced to Rs.11,000/-.

13. The Tribunal awarded Rs.500/- towards loss of income at the rate of Rs.50/- per day for over all ten days. The evidence of P.W.1 is that as an agricultural labourer, used to earn Rs.100/- per day. There is no rebuttal evidence to the evidence of P.W.1. The only suggestion is that the agricultural labourer would earn Rs.50/- per day and there would be only three months work in a year. Though there would be three months work in an agricultural year, taking Rs.50/- per day as wages to agricultural labourer is very less, which is below the standard minimum wages. Normally, the Courts would consider the monthly income of the agricultural labourer between Rs.3,000/- to Rs.4,000/- per month. Accordingly, I consider the monthly income of the deceased at Rs.3,000/- per month and award Rs.800/- towards loss of income for the period he was hospitalized from 20-06-2002 to 27-06-2002.

14. On all counts, the claimant is entitled for the total compensation of Rs.26,800/-.

15. The trial Court, having considered Ex.A5-Policy and the first respondent is owner-cum-driver of the offending auto bearing No.AP 30T 7215, rightly held that the respondents 1 & 2 are jointly and severally liable to pay the compensation.

16. Accordingly, the appeal is partly allowed with proportionate costs modifying 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.26,800/- with subsequent interest at the rate of 7.5% per annum from the date of petition dated 07-02-2003 till the date of award against respondents 1 & 2 which shall be deposited by the respondents, within a month from the date of the receipt of a copy of this judgment, after adjusting the amount, if any, already paid/deposited.

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

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

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

Date: -06-2017.

mrh

JUSTICE N. BALAYOGI

