

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.1825 of 2010

JUDGMENT :

The appellant/claimant aggrieved by the Award and Decree dated 26.07.2010 in O.P. No.902 of 2007 on the file of the Motor Accident Claims Tribunal-cum-VII Additional District and Sessions Judge (Fast Track Court) Nizamabad at Bodhan, preferred this appeal besides other grounds on the ground that the Tribunal failed to see that the claimant was earning Rs.7,500/- per month by tailoring and due to the accident, she is unable to do any work and suffered total loss of earning capacity. Since Ex.A.10 was marked with consent, it cannot be disputed or discarded. The tribunal failed to believe the evidence on record to the effect that the claimant has suffered fracture of humerus and even by taking the judicial note of the fact, the claimant would get Rs.7,500/- per month. The tribunal failed to consider the medical bills to the extent of Rs.23,000/-. It is further urged that the tribunal failed to see the evidence that the claimant was advised to undergo one more operation and hence, ought to have granted some amount towards future medical expenses. The tribunal has not granted any amount towards loss of future earnings and that the award granted is very meagre.

2. On the other hand, the learned standing counsel appearing for the respondents contended that there is no such disability and even as per the evidence of P.W.2-doctor, the fracture was united. The tribunal

rightly took the monthly income of the claimant as Rs.6,000/- per month. The medical bills to the extent of admissible was granted and no illegality or irregularity is discernable with the impugned order.

3. The claim of the appellant/claimant is that on 11.08.2007 at 12.15 p.m. while she was travelling in the bus bearing No.MH-20-D-8320 as a passenger from Nizampet to Patancheru and when the bus reached at Chowtkur village, the driver of the bus drove it in a rash and negligent manner at high speed and lost control, due to which, the bus turned turtle. As a result, the claimant sustained fracture to right hand, lacerated injury to right leg, injury on chin, injury on forehead, injuries on hands, legs and other injuries all over the body.

4. Immediately, the appellant/claimant was shifted to District head quarters hospital at Sangareddy. After first aid, she was shifted to Sri Sai Tirumala nursing home at Nizamabad for better treatment, where she was operated by P.W.2 fixing steel rod. She was treated as inpatient from 12.8.2007 to 20.8.2007 and later she was on periodical treatment and incurred an expenditure of Rs.50,000/- till filing of the petition. As per the advice of the doctor, she needs future operation. Due to the accident, she is not able to do any work with right hand and due to multiple injuries all over the body, she is suffering from pains and she was advised bed rest for three months. She sustained permanent disability. Her profession is tailoring and used to earn net income of Rs.7,500/- per month. Hence, she claimed total

compensation of Rs.3,00,000/- with interest at 18% per annum from the date of the petition.

5. The first respondent contested the petition filing counter and denying the averments of the claim petition. The second respondent adopted the counter of first respondent and contended that all of a sudden, left side of the steering of the bus got locked and to avoid accident, he applied breaks, due to which, the bus turned turtle towards its left side and hence, there is no fault on the part of the driver of the bus. The accident is only due to the mechanical defect.

6. The tribunal having considered the pleadings of both the parties, framed the following issues for trial:

1. Whether the accident occurred on 11.08.2007 at about 2.15 p.m. due to rash and negligent driving of the M.S.R.T.C. Bus bearing No.MH-20-D-8320 driven by its driver as per Sec.166 of M.V. Act?

2. Whether the petitioner is entitled to compensation? If so, to what amount and from whom?

3. To what relief?

7. In support of the claim, the claimant herself examined as P.W.1 apart from examining the doctor as P.W.2 and got marked Exs.A.1 to A.11. On behalf of respondents, R.W.1 was examined but no documentary evidence was adduced.

8. The point for consideration in this appeal is whether the award and decree passed by the tribunal suffers with any legal infirmities warranting interference by this Court?

9. The respondents are not disputing the findings of the tribunal with regard to the rash and negligent driving of the driver of the bus. There is also no dispute regarding the fact that P.W.1 was travelling in the offending bus as a passenger on the date of the accident. In the written statement filed by the first respondent, which was adopted by the second respondent, it is admitted that the bus turned turtle, but due to the steering of the bus got locked. But according to the appellant/claimant as P.W.1, whose oral evidence is supported by Ex.A.1-certified copy of F.I.R. and Ex.A.3-copy of charge sheet, the accident was due to rash and negligent driving of the driver of the bus. The driver of the offending vehicle filed his evidence as R.W.1 and his testimony was tested by cross-examination. His evidence in-chief is that all of a sudden, left side of the steering of the bus got locked and as such, he applied sudden breaks to avoid accident, due to which, the bus turned turtle. During cross-examination, he admits that he did not file any document to prove that the steering of the bus got locked towards its left side. Further he admitted that he is not aware whether the Motor Vehicle Inspector inspected the offending bus or not. Ex.A.1 is the copy of F.I.R. and Ex.A.3 is the copy of charge sheet. In the F.I.R., the complainant specifically stated that the accident was due to rash and negligent driving of R.W.1 himself. Ex.A.3 charge sheet was filed by the investigating officer after thorough investigation with a finding that the accident was due to rash and negligent driving of R.W.1. Nowhere in the charge sheet, there is a mention that the accident was due to steering was locked. In view of the clear

admission of R.W.1 that he did not file any proof showing that steering was suddenly locked and hence, he applied breaks due to which, the bus turned turtle. In the circumstances and considering the convincing evidence of P.W.1, which is supported by Exs.A.1 and A.3, I am of the opinion that the accident was due to rash and negligent driving of R.W.1, who is the driver of the offending bus. Hence, the finding of the tribunal is legal, valid and does not suffer with any legal infirmities.

10. With regard to the injuries and treatment received by the claimant, there is the evidence of P.W.1-injured and medical evidence of doctor-P.W.2 besides documentary evidence Exs.A.2-wound certificate; Ex.A.4-referral chit; Ex.A.5-discharge summary; Ex.A.6 - prescriptions; Ex.A.7-report; Ex.A.8-medical bills; and Ex.A.11-X-ray. The consistent evidence of P.W.1 is that as per Ex.A.2-wound certificate she sustained fracture to right hand, lacerated injury to the right leg, injury on chin, injury on forehead and injuries on hands, legs and other injuries all over the body. Ex.A.2-wound certificate supports the evidence of P.W.2, which discloses fracture of humerus of right arm, which is grievous in nature. P.W.1 was admitted in the area hospital, Sangareddy on 12.8.2007 and she was referred to private hospital at Nizamabad. Referring P.W.1 to the government hospital is evidenced by Ex.A.4 memo dated 11.8.2007.

11. To speak the nature of gravity of the injuries, P.W.2, the doctor, who treated the claimant, was examined. His evidence shows that P.W.1 was admitted in the hospital namely, Sri Sai Thirumala

Orthopaedic and Surgical Hospital on 12.08.2007 at Nizamabad. On examination, P.W.2 found fracture of humourus of right arm, for which, he conducted surgery on 15.8.2007 fixing plate and P.W.1 was discharged on 20.08.2007. Ex.A.5 is the discharge summary, which is supported by the evidence of P.W.2. The evidence of P.W.1 further corroborated the evidence of P.W.2 wherein he stated that P.W.1 took follow-up treatment for two and half months. During the treatment in the hospital at Nizamabad, P.W.2 has prescribed medicines under Ex.A.6, which are 18 in number. On his reference, tests were conducted and the corresponding reports were marked as Ex.A.7.

12. The tribunal having considered the ocular evidence of P.W.1 and the medical evidence of P.W.2-doctor supported by the documentary evidence under Exs.A.1 to A.8, came to the conclusion that after the accident, P.W.1 had taken treatment in the government area hospital, Sangareddy and later from P.W.2. Since there is no contra evidence placed by respondents 1 and 2 except the evidence of R.W.1 and their failure to examine the Motor Vehicle Inspector to the effect that whether any test was conducted by Motor Vehicle Inspector to prove that there was any mechanical defect in the bus, safely, came to the conclusion that the accident was due to rash and negligent driving of the driver of the offending bus.

13. With regard to the injuries, there is the evidence of P.W.1 supported by documentary evidence under Exs.A.2, A.4 to A.8 and A.11, which shows that P.W.1 sustained fracture of right hand and

underwent surgery conducted by P.W.2 on 15.8.2007 and plate was fixed and was discharged on 20.08.2007. P.W.2 specifically stated that the surgery is a major one. He was confronted with Exs.A.5 to A.8 and A.11 and he specifically stated that those were part of his treatment and medicines were purchased as prescribed by him. He further deposed that P.W.1 has to undergo another operation for removal of plate that was fixed while conducting surgery. On the date of giving evidence, P.W.2 examined P.W.1 and found restricted movements of right shoulder and P.W.1 was unable to do the work above the shoulder level, which amounts to permanent partial disability of 15%. During the cross-examination, P.W.2 admitted that by that time, fracture is united. But he denied the suggestion that P.W.1 was not having any disability much less 15% as assessed by him. It is not his evidence that there is no disability, but his evidence is that by the date of his deposition, the fracture is united, which does not mean that there is no disability. His evidence that he found restricted movements of right shoulder and P.W.1 was unable to do the work above the shoulder level itself speaks that P.W.1 sustained partial disability. Simply because P.W.2 stated the word 'fracture was united', does not mean there should not be any disability. Hence, the evidence of P.W.2 is corroborated with the evidence of P.W.1 and supported by Exs.A.2 to A.8 and A.11, which clearly suggests that there is disability of 15% to the right shoulder and the claimant being a tailor unable to carry out her profession as the said disability is permanent partial and is 15%.

14. Merely because some of the medical bills in the bunch under Ex.A.8 does not contain the name of the doctor, who prescribed the medicines, does not take away the very purchase of medicines under those bills. The tribunal erred in disallowing certain bills wherein the doctor's name was not mentioned. It is the categorical evidence of P.W.2 that the medicines under Ex.A.8 are purchased under his prescriptions. Therefore, the appellant/claimant is entitled for the entire amount incurred for purchase of medicines under Ex.A.8.

15. Since the appellant/claimant is a tailor by profession, the tribunal assessed her income at Rs.6,000/- per month. The claimant deposed that she was hale and healthy and used to earn Rs.7,500/- per month and she is having 30 years of experience and the surrounding villages' people used to come to her for stitching. According to her, she is aged about 50 years and due to the injuries sustained, she is unable to work with her right hand and she got permanent disability. In the absence of any rebuttal evidence, the tribunal took the monthly income of claimant at Rs.6,000/- and awarded a sum of Rs.16,000/- for two months and 20 days during which period, she took treatment, towards loss of earnings. It is also the evidence of P.W.2 that P.W.1 not only took treatment for 15.8.2007 to 20.8.2007 but she also took follow-up treatment for two and half months. This evidence was accepted by the tribunal.

16. As rightly discussed above, as per Ex.A.8 bills, P.W.1 incurred an amount of Rs.23,415/-. P.W.2 also deposed that P.W.1

purchased the medicines under Ex.A.8 bills as per his prescriptions. As already discussed above, mere non-mentioning the name of the doctor on the bills is not fault of P.W.1 and it is the concerned medical shop, which failed to mention the name, for which, P.W.1 cannot be penalised. The tribunal, out of Rs.23,415/- claimed by the appellant towards medicines covered by Ex.A.8, granted only Rs.19,415/- and rejected the rest of the amount on the ground that the name of the doctor is not mentioned in certain bills. As discussed above, in the light of the evidence of P.W.2, the claimant is entitled to the total amount of Rs.23,415/- covered by Ex.A.8 bills. Accordingly, the compensation awarded by the tribunal towards purchase of medicines is to be modified and is enhanced to Rs.23,415/- from Rs.19,415/-.

17. The tribunal awarded a sum of Rs.15,000/- towards pain and suffering, which does not warrant any interference by this Court. Further the tribunal granted a sum of Rs.16,000/- towards loss of earnings for the period of treatment of two months and 20 days, which shall not be granted because the disability was considered at 15% and the compensation should be awarded for permanent partial disability. Accordingly, this amount of Rs.16,000/- ought not to have been granted by the tribunal towards loss of income for the period of treatment since it would be merged in the compensation to be awarded under the head of permanent partial disability. The compensation of Rs.5,000/- awarded by the tribunal under the heads 'extra nourishment,

transportation & attendant expenses and Rs.8,000/- towards attendant charges is just and reasonable and needs no interference.

18. As already discussed above, having considered the evidence of P.W.1 who stated that she sustained fracture of humerus of right arm, due to which, she is unable to work and P.W.2-doctor deposed that the claimant-P.W.1 cannot carry out the tailoring work due to the injury to the right shoulder, her permanent partial disability is estimated at 15%. The tribunal has already assessed the monthly income of the claimant at Rs.6,000/-, which also does not warrant any interference.

19. Having considered the age of appellant/P.W.1 at 50 years, her income at Rs.6,000/- per month or Rs.72,000/- per annum, the relevant multiplier applicable to the age of the appellant is '13' as per **Sarla Verma and Others v. Delhi Transport Corporation & Another** (AIR 2009 SC 3104). After deducting 50% therefrom, the net income comes to Rs.36,000/- per annum out of which, 15% towards permanent partial disability comes to Rs.5,400/- per annum and after multiplying the same with the multiplier '13', the total loss of permanent disability of appellant comes to Rs.70,200/- (Rs.5,400/- x 13). In the circumstances, as already observed, after deducting the amount of Rs.16,000/- granted by the tribunal towards loss of income for the period of treatment for 2 months and 20 days, the net amount

granted under the head of permanent partial disability comes to Rs.54,200/- (Rs.70,200/- (-) Rs.16,000/-).

20. Thus in all, the appellant/claimant is entitled to the reasonable compensation of Rs.1,05,615/- (Rs.15,000/- + Rs.23,415/- + Rs.54,200/- + Rs.5,000/- + Rs.8,000/-).

21. In the result, the appeal is partly allowed modifying the award and enhancing the compensation granted by the Tribunal from Rs.63,415/- to Rs.1,05,615/- with proportionate costs and interest at 7.5% per annum from the date of the petition i.e., 24.10.2007 till realization against respondents 1 and 2 jointly and severally.

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

On such deposit, the appellant is permitted to withdraw the entire amount. No order as to costs.

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

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

06th November, 2017

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