

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.1933 of 2009

Date:10-03-2017

Between:

Anjilamma

... Petitioner.

And

Ram Reddy Patil and another.

... Respondents



THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.1933 of 2009

JUDGMENT:

The appellant, aggrieved by the order passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Mahabubnagar in O.P.No.396/2006, dated 04-02-2008, preferred this appeal on the ground that the trial Court ought to have seen that the appellant was an agricultural labour and as her right hand was amputated above elbow, she could not do any work and gainfully employed in any manner. Though the Doctor certified that she is physically disabled at 75%, the trial Court ought to have taken total permanent disability. The trial Court ought to have taken the daily income of the petitioner at Rs.110/- as claimed and deposed by the claimant in the absence of any rebuttal evidence.

2. The trial Court ought to have applied multiplier '14' instead of '11' taking into consideration the age of the appellant at 45 years. Further, that the trial Court erred in not awarding any amount towards pain and suffering and the mental trauma, which being suffered by the appellant for all these years. The trial Court ought to have granted interest at 12% per annum.

3. On the other hand, the respondents contended that there is no permanent disability and she can attend her normal duties as usual.

4. The claimant herself was examined P.W.1 besides examining P.W.2, the Doctor who is the member of the Medical Board which issued Ex.A10. The consistent evidence of P.W.1 is that she had sustained severe injuries to her right hand and her right hand was amputated. Immediately after the accident, she was shifted to

Government Head Quarters Hospital, Mahabubnagar, therefrom referred to Osmania General Hospital, Hyderabad, where she was treated as inpatient from 26-04-2006 to 02-05-2006. Subsequently, she took treatment privately. P.W.2, the Doctor, who treated P.W.1 in District Headquarters Hospital, Mahaboobnagar supports Ex.A10-disability certificate according to which, the right hand was amputated and disability certified at 75%. Ex.A9 is the photograph of the deceased with amputated right hand. Exs.A4 & A5 are the outpatient chit and discharge ticket showing the treatment of P.W.1 in Osmania General Hospital, Hyderabad. According to Ex.A5, P.W.1 was admitted in Hospital on 26-04-2006 and discharged on 02-05-2006. The injuries on the person of P.W.1 were proved by the Ex.A3-medical certificate issued by the Medical Officer, District Medical Hospital, Mahabubnagar.

5. In the case of **JAKIR HUSSAIN v. SABIR AND OTHERS** in an unreported decision decided by the Supreme Court of India on 18-02-2015, wherein their Lordships was held as follows:-

“The object of awarding damages is to make good the loss suffered as a result wrong done as far as money can do so, in fair, reasonable and equitable manner with reference to the nature of disability and its consequences”.

6. In the instant case, P.W.2, before issuing Esx.A10-disability certificate, as a member of the board, examined P.W.1 clinically and found that her right hand was amputated and also found that P.W.1 sustained traumatic amputation of right arm in a motor accident and sustained 75% disability. During cross-examination, P.W.2 deposed that if the amputation is for the total arm, the disability would be

90%. Even if artificial limb is arranged, she could not walk normally. Though Ex.A10-disability certificate coupled with Ex.A9-photo, the Doctor-P.W.2, as a member of the medical board, has assessed the permanent disability of the appellant at 75%.

7. However, it is important to consider the relevant fact namely; that the appellant is a lady and labour which is the only means of livelihood for herself as well as the members of her family. Further, the trial Court, having considered both oral and documentary evidence on record, clarified the mistake occurred in typing the deposition of P.W.2, wherein typed as left arm where Ex.A9-Photo and Ex.A10-disability certificate goes to show that the amputation was done to the right arm. The disability is assessed at 100%. In other words, the capacity of the workman to do particular work or every work has to be judged with reference to the work with which she was engaged or she was capable of doing at the time of accident. By loss of right hand, the appellant has conveniently being referred unfit for the labour work, because the work of labour cannot be done with one hand, therefore, the disability is at 100%. The trial Court erred in holding the disability at 75% as per the evidence of P.W.2 simply on the ground that the petitioner is an agricultural labourer in an unorganized agricultural sector. Hence it cannot be said that the disability is 100% as she is able to attend her labour work with her left hand such finding is erroneous, because the agricultural labour required both the hands for plantation, cutting of paddy crop, harvesting and threshing paddy. The appellant cannot carry labour work with a single hand. Therefore, I am of the opinion that the finding of the trial Court is erroneous and ultimately hold that the disability is at 100%.

8. With regard to the income of the claimant, there is evidence of P.W.1 that she is an agricultural labour aged at 45 years and used to earn Rs.110/- per day i.e., Rs.3,300/- per month. There is no cross-examination of P.W.1 with regard to her income. The respondent did not adduce any rebuttal evidence to the evidence of P.W.1 with regard to the daily wages of a labour. Even though there is no rebuttal evidence, the trial Court went wrong in assessing the daily wages of the petitioner at Rs.60/- per day i.e., Rs.1,800/- per month and Rs.21,600/- per annum.

9. With regard to the age, admittedly the petitioner did not file any document showing that she is 45 years as on the date of the accident. There is the evidence of P.W.1, wherein she deposed that she is 45 years. In the claim petition also noted the age of the petitioner-claimant as 45 years. Ex.A2 is the charge sheet, Ex.A3 is the wound certificate, Ex.A4 is the out-patient ticket issued by the Osmania General Hospital, Hyderabad, Ex.A5 is the discharge summary issued by the Osmania General Hospital, Hyderabad and Ex.A10 is the disability certificate, wherein the age of the claimant is recorded as 45 years.

10. According to the evidence of P.W.1 and Exs.A2 to A5 and A10, she was 45 years at the time of accident, but the trial Court, without considering the available documentary evidence on imagination, assessed the age of the claimant between 50 to 55 years.

11. In the facts and circumstances discussed above, I find that the appellant was an agricultural labour aged 45 years and in the accident, her right hand was amputated, though in Ex.A10, P.W.2

deposed the disability is assessed at 75%, because she is an agricultural labour and she cannot perform the labour works with a single hand, the disability is assessed at 100%. The trial Court, without considering the available evidence on record both oral and documentary, came to the right conclusion that the appellant must be 60 years and she can perform agricultural work with single hand and applied multiplier at '11'.

12. As per the decision of Hon'ble Supreme Court reported in **SARLA VERMA AND OTHERS vs. DELHI TRANSPORT CORPORATION AND ANOTHER**¹, the relevant multiplier for the age group of 41 to 45 is '14'. The monthly income of the appellant assessed at 110/- per day and considering monthly working days at 25 days = Rs.2,750/- (*Ramnghakthari and another vs. H. Lalhmunliana and another (2015 ACJ 1819)*). The annual income comes to Rs.33,000/- (Rs.2,750/- x 12). After deducting 1/3rd towards her personal expenses i.e., Rs.33,000 - 11,000 = 22,000/- and by applying multiplier '14', which comes to Rs.22,000 x '14' = Rs.3,08,000/-. Besides I also awarded Rs.5,000/- towards extra nourishment, Rs.6,000/- towards medical expenses though she took treatment in OGH, Hyderabad. I also awarded Rs.3,000/- towards transportation charges. In total, the petitioner is entitled for compensation is Rs.3,22,000/-.

13. Accordingly, the claim is allowed and awarded an amount of Rs.3,22,000/- to the claimant jointly and severally against respondents 1 & 2, which also carry 7.5% interest from the date of petition i.e., from 26-08-2006 till date of deposit, which shall be

¹ 2009 ACJ 1298

deposited by the respondents, within a period of 30 days from the date of award in the appeal.

14. On such deposit, the appellant is permitted to withdraw Rs.1,72,000/- and the remaining amount can be deposited in FDRs in any nationalized bank. Advocated fee is fixed at Rs.1,500/-.

15. In the result, the appeal is allowed with proportionate costs and the impugned award dated 04-02-2008 in O.P.No.396 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Mahabubnagar is modified to the extent indicated above.

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

Date:10-03-2017.

mr**b**

JUSTICE N. BALAYOGI

