

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A. No.1056 of 2008

JUDGMENT:

1. The appellant/claimant, aggrieved by the Award and Decree dated 06.09.2000 in O.P.No.617 of 1998 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge (for short 'the Tribunal'), Ranga Reddy District, preferred this appeal.

2. The parties will hereinafter be referred to as arrayed before the Tribunal.

3. The case of the claimant is that on 01.11.1995 at 6.30 p.m. the claimant was proceeding on scooter from Jahirabad to Tandur, along with one Satyanarayana, when they reached Kuncharam Village near the Forest Office one van bearing No.AP 09 U 2325 came in opposite direction in a rash and negligent manner and dashed the scooter, as a result he fell down and received grievous injuries viz., fracture of right leg, thigh and near eye, loss of teeth and multiple injuries all over the body. After first aid at Bidar Hospital, he was shifted to Appollo Hospital at Jubilee Hills, Hyderabad, where he took treatment from 02.11.1995 to 22.11.1995.

4. The second respondent/ insurer filed counter denying averments and contended that the claimant has to establish nature of injuries, treatment and loss of earnings and prayed to dismiss the claim petition.

5. On the strength of the above pleadings, the Tribunal settled the following issues:

1. Whether the accident had occurred due to the rash and negligent driving of the van bearing No.AP 9 U 2325 by its driver?
2. Whether the petitioner is entitled for compensation? If so, to what amount?
3. To what relief?

6. On behalf of claimant, P.Ws.1 and 2 were examined and Exs.A.1 to A.13 were marked and on behalf of the second respondent/ insurer, no oral evidence is adduced, but Ex.B.1 – copy of policy was marked.

7. Considering oral and documentary evidence, the Tribunal awarded an amount of Rs.1,05,000/- with interest thereon at 12% per annum from the date of petition till the date of deposit payable by the respondent jointly and severally.

8. Having dissatisfied with the compensation awarded under different heads, the claimant preferred this appeal.

9. The contention of the claimant is that the Tribunal erred in considering Ex.A.10- discharge summary and Ex.A.11 – bunch of medical bills while awarding an amount of Rs.60,000/- towards treatment, failed to consider that he was treated in Appollo Hospital nearly for one month and incurred an amount of Rs.1,00,000/- apart from medical bills. It is further contended that the Tribunal failed to consider that he sustained fracture to his right leg and loss of teeth and sustained permanent disability on

face, and the amount awarded under different heads is very meager and without any basis.

10. The appeal against the first respondent is dismissed for default vide Court Order dated 19.12.2007.

11. The second respondent/ insurer contended that the Tribunal having considered oral and documentary evidence awarded the compensation and did not suffer with any legal infirmities.

12. Now the point that arises for determination is,

“Whether the order of the Tribunal suffers from any legal infirmities warranting interference?”

13. The contention of the claimant is that the accident was occurred due to rash and negligent driving of the van.

14. During the course of cross-examination, the second respondent put a suggestion to P.W.1 that due to his fault the incident happened and they were returning after consuming alcohol, but no rebuttal evidence is produced to prove the negligence of the claimant.

15. The Tribunal after considering the evidence of P.W.1 and Ex.A.1 – certified copy of F.I.R, its translated copy marked as Ex.A.2, Ex.A.4 - M.V.I. report, Ex.A.5 - scene of offence panchanama, its translated copy marked as Ex.A.6, Ex.A.7 –

certified copy of charge sheet and its translated copy marked as Ex.A.8, having marshalling the facts, came to the right conclusion that the accident was occurred due to rash and negligent driving of the van bearing No.AP 09 U 2325 by its driver.

16. The contention of the claimant is that the Tribunal erred in considering the injuries sustained by him while awarding compensation.

17. According to P.W.1, he sustained fracture injury to the right leg, loss of two teeth and also an injury to an eye and he took treatment in the Appollo hospital for 21 days. P.W.1 also examined P.W.2 - Chief Medical Officer at Appollo Hospital on his behalf. According to the evidence of P.W.2, the claimant was inpatient in Appollo Hospital for a period of 19 days i.e. from 02.11.1995 to 22.11.1995 for the injuries sustained by P.W.1 i.e. fracture of right femur mid shaft, head injury and facial injury and they are grievous in nature as mentioned in Ex.A.13- case sheet. He further deposed that on recent examination, the deformities like difficulty in phonation, initiation of speech with stammering, facial asymmetry with denting of the lower orbital fossa on the face, loss of two biting teeth of upper alveolar margin and he also noticed plate fixed in the femur of right thigh. It is further deposed that the disability of speech is 10% and the face is about 8%. The claimant has to undergo surgery for the removal of plate, which costs of Rs.15,000/- and requires plastic surgery of the face and its costs Rs.20,000/-. During the cross-examination, P.W.2 admitted that

after satisfying the general condition of the patient, he was discharged.

18. The disability as stated by P.W.2 is not mentioned in Ex.A.13- case sheet and no disability certificate was issued by the doctor who treated the claimant. The Tribunal having considered the evidence of P.W.2 came to the conclusion that the evidence of P.W.2 does not show that P.W.1 has got any permanent disability in earnings. In the absence of convincing evidence, the conclusion of the Tribunal that there is no evidence to establish any disability is legal.

19. With regard to the medical expenses, the evidence of P.W.1 is that he spent an amount of Rs.1,50,000/- for treatment. In support of which, he filed Ex.A.11 - medical bills, but did not file the final bill issued by the Appollo Hospital, which will be issued at the time of discharge and had he produced any such final bill it should reflect the treatment and total amount spent by the petitioner in Appollo Hospital. The claimant filed a receipt dated 22.11.1995 for a sum of Rs.20,750/-, which is said to be professional charges of the doctor. As can be seen from the receipts, an amount of Rs.54,717/- was spent under different bills. Having taken into consideration bunch of medical bills marked under Ex.A.11, the Tribunal awarded an amount of Rs.60,000/- only. But the Tribunal did not consider the Receipt dated 22.11.1995 for Rs.20,750/-. The Tribunal also awarded an amount of Rs.35,000/- for three fracture injuries is very meager besides awarding an amount of Rs.10,000/- towards disability. According

to the evidence of P.W.2, the disability for the speech is 10% and the face is about 8%.

20. Having considered the injuries sustained by P.W.1, I feel that an amount of Rs.30,000/- to the fracture of right femur mid shaft, an amount of Rs.10,000/- to the head injury and an amount of Rs.40,000/- for 8% disability on his face will meet the ends of justice. Further, there is loss of two teeth and the disability of speech is 10%, for which an amount of Rs.25,000/- is just compensation. Besides that, an amount of Rs.5,000/- towards pain and suffering, an amount of Rs.15,000/- for future surgery and for removal of plates and an amount of Rs.20,000/- for plastic surgery to the face and an amount of Rs.5,000/- towards nutrition food will meet the ends of justice. On all counts, the claimant is entitled for an amount of Rs.1,50,000/- towards compensation.

21. The first respondent being the owner of the offending vehicle bearing No.AP 9U 2325, and the second respondent being its insurer, are joint and severally liable to pay the compensation.

22. In the result, the appeal is partly allowed with proportionate costs, modifying the Award and Decree dated 06.09.2000 in O.P.No.617 of 1998 on the file of the Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District to the extent indicated hereinabove.

23. Consequently the second respondent is directed to deposit the total compensation of Rs.1,50,000/- with interest at

7.5% per annum from the date of petition i.e. 31.1.2000 till the date of deposit, less the amount if any already paid, within a period of thirty days from the date of receipt of a copy of this judgment.

24. On such deposit being made, the appellant/claimant is permitted to withdraw the same, without furnishing any security.

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

26. Miscellaneous Petitions, if any, pending consideration in this appeal shall stand closed in consequence.

23rd August, 2017
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JUSTICE N.BALAYOGI

