

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.1172 of 2009

Date:24-03-2017

Between:

Ajmeera Srinivas alias Ajmeera Srinu

... Petitioner.

And

D. Linganna and another.

... Respondents



THE HON'BLE SRI JUSTICE N. BALAYOGI**MACMA No.1172 of 2009****ORDER:**

The appellant-claimant, aggrieved by the award of Motor Accident Claims Tribunal –cum-I Additional District Judge, Nizamabad in O.P.No.992 of 2002, dated 06-11-2004, preferred this appeal beside other grounds on the ground that the Tribunal erred in awarding Rs.26,000/- under the head of injuries, Rs.10,000/- towards pain and sufferings, Rs.8,000/- towards medical bills instead of Rs.1,50,000/- and also in awarding a total compensation of Rs.41,500/- against the claim of Rs.3,00,000/-.

The trial Court also erred in not awarding any amount towards disability even though he lost total earnings and not awarding any amount towards transportation charges.

Further erred in fixing the monthly income of the injured at Rs.2,500/- instead of Rs.15,000/- per month.

The second respondent contended that the trial Court, having considered the oral and documentary evidence, awarded compensation of Rs.41,500/- which is legal and valid and do not suffer from any legal infirmities warranting interference.

The appellant-petitioner filed the claim petition under Section 166 of Motor Vehicle Accident claiming compensation of Rs.3,00,000/- on the ground that on 14-03-2002, while the petitioner was proceeding by walk on left side of the road, at about 06:30 P.M., the tractor bearing No.AP 25T 7549, driven by its driver, in a rash and negligent manner, with high speed, came in wrong side of the road, he lost the control and dashed the petitioner. As a result, the claimant sustained multiple fracture of both bones of right leg, multiple fracture of left leg, fracture to skull, ribs and other multiple

and grievous injuries. He incurred an expenditure of Rs.1,50,000/- towards medicines.

To prove the claim, the petitioner-claimant himself filed evidence affidavit and marked Exs.A1 to A30. He was not subjected to cross-examination of respondents. The second respondent also did not file any counter. The claimant as P.W.1 in the evidence affidavit reiterated the same facts what he stated in the claim petition.

Absolutely, there is no rebuttal evidence to the evidence of P.W.1. Ex.A1 is copy of the F.I.R, Ex.A2 is the certified copy of the wound certificate, Ex.A3 is the copy of insurance cover note, Ex.A4 is the discharge card, Exs.A5 to A20 are the medical bills, Ex.A21 is the cash bill and Exs.A22 to A28 are the X-rays. Ex.A29 is the Certificate of Registration and Ex.A30 is the driving licence. There is no dispute for cross-examination of P.W.1 with regard to Exs.A1 to 30. Hence the evidence of P.W.1 and supported documents under Exs.A1 to A30 is remained unchallenged.

It is not in dispute that on 14-03-2002, while the petitioner was proceeding by walk on left side of the road, at about 06:30 P.M., the tractor bearing No.AP 25T 7549 driven by its driver drove in a rash and negligent manner, with high speed, came in wrong side of the road, he lost the control and dashed the petitioner. As a result, the claimant sustained multiple fracture of both bones of right leg, multiple fracture of left leg, fracture to skull, ribs and other multiple & grievous injuries. Hence the relevant evidence of P.W.1 with regard to disability, injuries sustained, occupation & income are the factors for consideration now in the appeal.

The Tribunal, having considered the unimpeachable evidence of P.W.1 and the document-Ex.A1-FIR, came to the right conclusion that the accident was due to rash and negligent driving of the driver

of the tractor bearing No.AP 25T 7549. The unrebutted evidence of P.W.1 is that he sustained fracture of both bones of right leg, multiple fractures to the left leg, fracture of skull, fracture of ribs and other multiple and grievous injuries in all over the body.

To substantiate the injuries, claimant filed Ex.A2-wound certificate and Ex.A4-discharge card. The injuries sustained by P.W.1 in the accident as noted in Ex.A2 are fracture of shaft femur right M/3 and fracture of shaft tibia to the left leg and both the injuries are grievous in nature. Ex.A2 further goes to suggest that he sustained superficial abrasion on the left leg, which is simple in nature. In Ex.A4-discharge summary noted that there is a fracture of right femur and fracture of tibia to the left leg, therefore, the injuries sustained by P.W.1 as per his corroborative evidence and Exs.A3 & A4 are fracture of right femur and fracture of left tibia and one simple abrasion.

The Doctor is the proper person to speak about the nature and gravity of the injuries and disability if any the petitioner suffered. The claimant did not chose to examine the Doctor, who treated P.W.1, in Pragathi Hospital and also Government General Hospital, Nizamabad. Except the ocular evidence of P.W.1 and Exs.A4 to A28, the wound certificate, discharge card, medical bills, cash bills and X-rays, there is no supporting medical evidence. The X-rays would show the fracture to the right femur and left tibia, which are grievous in nature. The medical bills under Exs.A5 to A21 would establish the expenditure incurred by the petitioner towards treatment.

In the absence of any rebuttal evidence with regard to Exs.A5 to A21, the petitioner is entitled for the total amount covered by Exs.A5 to A21, which the total comes to Rs.25,547/-

As already discussed above, there is no iota of evidence in proof of disability particularly permanent in nature.

The Tribunal awarded Rs.25,000/- towards compensation for the fracture of shaft fibula and shaft tibia and Rs.1,000/- for abrasion which is very meager.

Having considered the evidence of P.W.1 read with Ex.A4, the discharge card, according to which, the claimant admitted in the hospital on 14-03-2002 and discharged on 25-03-2002 and accordingly, he was in hospital for 12 days which further supported by Exs.A22 to A28-X-rays, I feel that awarding of Rs.30,000/- to each fracture of right femur and left tibia and Rs.4,000/- for one abrasion, totaling to Rs.64,000/- towards compensation for the said injuries.

Though during evidence P.W.1 deposed that he engaged an attendant by spending Rs.2,000/-, but he did not adduce any corroborative oral or supporting documentary evidence.

Having considered the living condition of the petitioner and his profession as simple Tractor Mechanic, I find that the petitioner has not chosen to engage an attendant and accordingly, he is not entitled for any attendant charges.

As already discussed above, the claimant in proof of medical expenses filed Exs.A5 to A21, which are not rebutted by the respondents by filing counter or adducing any oral evidence. In the absence of such rebuttal evidence, the evidence of P.W.1 supported by Exs.A5 to A21-medical bills and Exs.A22 to A28-X-ray Films, I find that the petitioner is entitled for actual amount incurred under Exs.A5 to A21, which comes to Rs.25,547/- towards his treatment and medicines.

The petitioner as per Ex.A4 was hospitalized from 14-03-2002 to 25-03-2002 for period of 12 days, but the trial Court, without any basis and instead of the fact that there is no rebuttal evidence to the evidence of P.W.1, came to erroneous conclusion and assessed the monthly income of the petitioner at Rs.2,500/- and awarded

Rs.7,500/- towards loss of earnings, which is illegal and warrants interference.

Though the appellant claimed Rs.1,50,000/- towards transportation charges and medical expenses, there is no whisper about the transportation charges in the evidence affidavit. However, considering that the claimant was immediately, after the accident, was shifted first to the Government General Hospital, Nizamabad and there from to the Pragathi Hospital where he was admitted and took treatment as in patient. Therefore, an amount of Rs.5,000/- was awarded towards transportation charges. Further an amount of Rs.10,000/- is awarded towards pain and sufferings. Further I award an amount of Rs.40,000/- towards future treatment and medicines.

As per evidence of P.W.1, he was running a workshop and doing tractor mechanic works and earning Rs.15,000/- per month. In the complaint also, he claimed that he was earning Rs.15,000/- per month as tractor mechanic by running a work shop. There is no cross-examination of P.W.1 to rebut his evidence. Even then he did not produce any document in proof of income. In the absence of any such convincing proof with regard to monthly income of the deceased, having considered the age of the deceased at 20 years and doing tractor mechanic works, I assess the monthly income of the deceased at Rs.6,000/- per month. The accident was occurred on 14-03-2002. He was hospitalized for 12 days as in-patient. The claim petition was filed on 22-07-2002. Absolutely, there is no any rebuttal evidence as the petitioner became permanent disability. From the date of accident i.e., on 14-03-2002, till the date of filing the petition i.e., on 22-07-2002, the total days, which comes to four months eight days.

Accordingly, having considered the nature of injuries sustained by the petitioner i.e., fracture of right femur and left tibia and the pain & sufferings, I award loss of earnings at the rate of Rs.6,000/- per month, for period of four months eight days, which comes to Rs.26,600/- towards loss of earnings from the date of accident till filing the claim petition.

In the facts and circumstances of the above, I find that P.W.1 in the accident sustained injuries namely; (1) fracture of shaft femur right M/3, (2) fracture of shaft tibia to the left leg and also (3) superficial abrasion on the left leg. The injuries 1 & 2 are grievous in nature and third injury is simple in nature. Absolutely there is no evidence in proof of disability particularly mental disability. The claimant is entitled for Rs.25,547/- towards medical expenses and treatment covered by Exs.A5 to A21 medical bills besides that he is also entitled for Rs.40,000/- towards future medical expenses and treatment.

Having considered the gravity of the injuries, I award Rs.30,000/- each grievous injury, which comes to Rs.60,000/- and Rs.4,000/- to the simple injury and in total, the petitioner is entitled to Rs.64,000/- towards compensation for the injuries, Rs.10,000/- towards pain and sufferings and Rs.26,600/- towards loss of earnings and Rs.5,000/- towards transportation charges and in total, the petitioner is entitled to an amount of Rs.1,71,147/- to the petitioner.

In the result, the appeal is partly allowed with proportionate costs while setting aside and modifying the award of the Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad in O.P.No.992 of 2002, dated 06-11-2004.

By virtue of Ex.A3-insurance cover note, the second respondent has to indemnify the liability of the first respondent. Accordingly, respondents 1 & 2 are jointly and severally liable to pay compensation amount of Rs.1,71,147/- with interest at 7.5% per annum from the date petition i.e., on 22-07-2002 till the date of deposit as per present existing bank rate of interest, which shall be deposited by the respondents, within 30 days from the date of receipt of a copy of this judgment.

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

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

As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

Date:24-03-2017.
mrh



JUSTICE N. BALAYOGI