

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No. 2121 OF 2009.

JUDGMENT:

1. The appellant/claimant aggrieved by the Award dated 2.2.2009 passed in M.V.O.P.No.326 of 2000 on the file of Motor Accident Claims Tribunal-cum-IV Additional District Judge, East Godavari District, at Kakinada, preferred present appeal on the grounds that the Tribunal failed to consider sufferance of the appellant/claimant basing on Ex A.2-Wound Certificate and his hospitalization for 45 days and his further suffering of weakness in lower limbs even after seven years from the date of accident while awarding compensation and that the amount awarded is very meager and would not meet the expenditure incurred by him.

2. The case of the appellant/claimant is that he was working as cleaner on the lorry bearing registration No. AP 5X 1848. While so on 18.11.1998 the lorry on which he was working as clear was stopped for night halt in Sundergudi and while he was crossing the road, the lorry bearing registration No. AP 24 U 6379 driven by the first respondent-driver in rash and negligent manner and at high speed, dashed him.

3. The appellant/claimant, due to the accident, sustained multiple injuries and took treatment in Government Hospital, Balasore and later was shifted to S.C.B. Medical College

Hospital, Cuttack for better treatment. Thereafter, he was referred to Government General Hospital, Kakinada.

3. A. Seshagiri Rao and Chinta Koteswara Rao were the drivers on the offending lorry at the time of accident. There was blood clot in the brain on the left side. Still there is weakness in the right upper and lower limbs even after ten years of the accident.

4. The appellant/claimant was examined as P.W.1, The doctor, who treated the claimant/P.W.1 and issued Ex. A.2-Wound certificate and maintained Ex. C.1-case sheet, was examined as P.W.2 The clinching evidence of P.W.1 is that on 18.11.1998 he was present on lorry bearing registration No. AP 5X 1848 as cleaner of the said lorry and when the said lorry was stopped in Sundergudi for night halt and while he was crossing the road, lorry bearing registration No. AP 24 U 6379 being driven in rash and negligent manner, without blowing horn, came in high speed and hit P.W.1. The only suggestion put to P.W.1 was that at the time of accident, he was under the influence of alcohol and tried to cross the road and at his negligence, the accident occurred and there is no negligence on the part of first respondent for the cause of accident. There is no suggestion to P.W.1 that he is the proper person to speak about the offending lorry bearing Registration No. AP 24 U 6379 which was involved in the accident. Ex.A.1 is the certified copy of FIR, according to which, accident occurred near

Sundergudi, National Highway No.5. The accident occurred on 18.11.1998 at about 9.30 PM whereas complaint was lodged at 10.15 PM of 22.11.1998. In the said Ex. A.1, the number of vehicle was clearly mentioned as AP 24U 6379. The Investigating Officer, after investigating the case filed charge sheet, Ex. A.3 against Seshagiri Rao, driver of offending lorry bearing No. AP 24 U 6479.

5. R.W.1 is the Assistant Manager of the third respondent-Insurance Company. During his cross examination, he admitted that his evidence was based on the record and not on his personal knowledge. It is clear from the evidence of R.W.1 that he was not a direct witness to the accident.

6. In the chief affidavit itself, R.W.1 stated that in the petition in I.A.No. 1470 of 2001 filed by the appellant/claimant, it was clearly stated that A. Seshagirao was the driver and Ch.Koteswararao was the rest driver on the lorry bearing registration No. AP 24U 6379 at the time of accident. During the cross examination, he admitted that for the lorry having national permit, there would be two drivers and denied the suggestion that there was no basis to say that the first respondent—A.Seshagiri Rao was the driver of the offending lorry at the time of accident. The material on record clearly goes to suggest that at the time of accident, Chinta Koteswara Rao was the driver on the offending lorry bearing No. AP 24U 6379, where as Chinta Koteswara Rao

was present on the said lorry as spare driver. Accordingly his name was mentioned in the petition. There is no discrepancy. Even if it is there, it is clarified by R.W.1 itself that at the time of accident, A.Seshagiri rao was the driver and Ch.Koteswararao was the spare driver on the lorry bearing registration No. AP 24 U 6379 at the time of accident. I do not find any error or legal infirmity in the finding of the Tribunal that the accident occurred involving lorry bearing registration No. AP 24 U 6379 at the time of accident and the driver having driven the said lorry in rash and negligent manner.

7. The further contention of the appellant/claimant is that the compensation awarded by the Tribunal is very meager and does not stand to legal scrutiny.

8. The evidence of P.W.1 is that immediately after the accident, he was shifted to Government Hospital, Balasor where he was given first aid. From there, he was shifted to SCB Medical College Hospital, Cuttack. Ex.A.2 is the wound certificate. To prove it, the appellant/claimant examined the doctor who treated him in Government General Hospital, Kakinada as P.W.2. The evidence of P.W.2 corroborates the evidence of P.W.1. The case sheet, Ex. C.1 maintained by P.W.2 shows that at the time of admission in Government General Hospital, Kakinada, P.W.1 was conscious, but not taking. He was referred from SCB Medical College Hospital, Cuttack after he was treated there for ten days.

The C.T. scan for the brain report revealed blood clot in the brain on the left side. The treatment of P.W.1 in SCB Medical College Hospital, Cuttack was by the medical management and he was discharged from the said hospital on 18.01.1998. At the time of discharge, he was found very weak in right upper and lower limbs and there was head injury which was grievous.

9. Before entering into the witness box, P.W.2 also examined P.W.1/appellant/claimant and found that P.W.,1 was having weakness in right upper and lower limbs and the injury suffered by P.W.1 ended in permanent disability. There is no suggestion to the evidence of the doctor-P.W.2 on the aforesaid aspect. His evidence is completely supported by Ex.C.1-case sheet, CT Scan report and clinical examination of P.W.1. As per Ex. A.2, P.W.1 was in comotosed stage and also alcoholic breath at the time of admission in Government General Hospital, Kakinada. Ex. A.2 shows that the injury suffered by the P.W.2 was due to fall from truck and there was an injury to skull. Ex. A.2 further shows that injury to the head was external and injury to the brain was internal.

10. Though P.W.2 admitted in his cross examination that at the of admission P.W.1 was in comotosed stage and also with alcoholic breath, absolutely there is no evidence showing negligence on the part of P.W.1 and due to consumption of

alcohol, he fell down. The specific admission in Ex.A.1-FIR and Ex.A.3-charge sheet would well establish that the accident involves lorry bearing registration AP 24 U 6379; that P.W.1 sustained brain injury and there was a blood clot in the brain on the left side and also weakness in right upper and lower limbs. Ex.C.1-case sheet and Ex. A.2-wound certificate corroborate the evidence of Doctor, P.W.2. The injuries suffered by P.W.1 were grievous in nature. Because of head injury and blood clot in brain, both right upper and lower limbs became weak and there was permanent disability and even after ten years of the accident, still weakness in right upper and lower limbs is continuing.

11. The appellant/claimant did not produce any disability certificate. P.W.2 did not spoke about percentage of disability. As the matter stood thus, both oral evidence of P.Ws.1 and 2 supported by the documentary evidence at Ex. A.2, Ex. C.1, well established that the appellant/claimant sustained head injury and there was a blood clot in the brain, because of which, his (P.W.1) right upper and lower limbs became weak and even after lapse of ten years from the date of accident, still weakness is continuing. The appellant/claimant took treatment in the hospital for about two months.

12. Having considered the oral and documentary evidence, the Tribunal awarded the compensation of Rs.50,000/-,

in all, to the appellant/claimant, which is very meager. It is established that immediately after the accident, the appellant/claimant was shifted to Government Hospital, at Balasor, thereafter, he was admitted in SCB Medical College Hospital, Cuttack and took treatment for some days. Thereafter, he was referred to Government General Hospital, Kakinada and discharged on 18.1.1998. He was in the hospital for about two months. The C.T. scan report reveals blood clot in the brain on the left side and he sustained grievous injuries. He is unable to attend his duties. Having considered the oral evidence of P.Ws. 1 and 2 and documentary evidence viz, Exs. A1 to A.3, I find that the Tribunal erred in awarding meager compensation of Rs.50,000/-, which is not at all just and reasonable compensation. Accordingly, the impugned award of the Tribunal suffers from legal infirmities warranting interference by this Court and liable to be modified.

13. According to the evidence of P.W.1, he was working as cleaner on lorry bearing No. AP 5 X 1848 and used to earn Rs.2,500/- per month. Absolutely there is no rebuttal evidence to the said income. In my considered view, monthly income of a cleaner at Rs.2500/- can be said to be a just and appropriate income. However, the Tribunal did not award any amount towards loss of earnings. Having considered the monthly income of the appellant/claimant, it is just and reasonable to award Rs.5000/-

towards of loss of earnings for two months, during which period, he was in hospital.

14. Further, having considered the nature of injuries suffered by the appellant/claimant and treatment under gone by him and also, still suffering of weakness in the right upper and lower limbs, awarding of Rs.30,000/- towards medical expenses, an amount of Rs.10,000/- towards extra nourishment, an amount of Rs.10,000/-towards pain and suffering and another amount of Rs.30,000/- towards future medical expenses, is just and appropriate.

15. Thus, in all the appellant/claimant is entitled to receive the compensation of Rs.85,000/-, which shall be paid by the respondents 2 and 3 jointly and severally with interest at 7.5% per annum from the date of petition i.e. 19.5.2000 till the date of deposit.

16. Respondents 2 and 3 shall deposit the compensation amount awarded hereinabove within thirty days from today and on such deposit, the appellant/claimant is permitted to withdraw the same.

17. Accordingly the appeal is partly allowed, with proportionate costs, while setting aside/modifying the Award dated 2.2.2009 passed in M.V.O.P.No.326 of 2000 by the learned Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, East Godavari District, at Kakinada, and awarding Rs.85,000/- with interest at 7.5% per annum from the date of claim petition i.e. 19.05.2000 till the date of deposit, which shall be deposited by the respondents 2 and 3 jointly and severally within one month from the date of order.

On such deposit, the appellant/claimant is permitted to withdraw the same.

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

19. Miscellaneous petitions pending consideration if any in the MACMA shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 24th MARCH, 2017.
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