

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.1659 of 2010

JUDGMENT :

The appellant/claimant aggrieved by the Award and Decree dated 17.02.2010 in M.V.O.P. No.9 of 2007 on the file of the Motor Accident Claims Tribunal-cum-II Additional District Judge, East Godavari at Amalapuram, preferred this appeal besides other grounds on the ground that the Tribunal did not grant any compensation under the head 'permanent disability', though the appellant received injury on the tibia and fibula and did not grant the entire amount towards the medical expenses though the appellant presented the medical bills issued by the hospitals. Further under the head 'shock, pain and suffering' the tribunal granted only meagre amount. It is further contended that the tribunal has not granted any amount towards future medical expenses and future treatment for the fractured injuries sustained by him.

2. On the other hand, the first respondent/Insurance Company contended that the tribunal having considered the oral and documentary evidence on record, granted reasonable compensation which does not suffer from any legal infirmities.

3. The claim of the appellant/claimant is that on 18.8.2006 while he was returning from Ravulapalem on his cycle and when he reached Kommarajulanka canal bridge, the third respondent, who was riding motorcycle bearing registration No.AP 5AE 8596 came in rash and

negligent manner with high speed and dashed from his back, due to which, he fell down on the road and sustained injuries.

4. Immediately, the appellant/claimant was shifted to Sri Chaitanya Orthopaedic Hospital, Tanuku and later he was referred to Medicare Hospital, Rajahmundry on 20.8.2006 where, he was given treatment till 20.9.2006. At Sri Chaitanya Orthopaedic Hospital, Tanuku, the appellant, altogether incurred expenditure of Rs.33,344-44 ps, and at Medicare hospital, Rajahmundry, he incurred an amount of Rs.63,056.50 ps. and by the time of discharge from Medicare hospital, he was made to pay an amount of Rs.96,490/- in all, towards hospital medical expenses. Hence, the appellant sought for compensation of Rs.4.00 lakh before the tribunal.

5. The first respondent/Insurance Company contested the petition claiming negligence on the part of the appellant/claimant himself.

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

1. Whether the accident occurred due to rash and negligent driving of the vehicle i.e. AP 5AE 8596 Motor cycle by its driver 1st respondent?

2. Whether the petitioner is entitled to any compensation, if so, to what amount and against whom?

3. To what relief?

7. In support of the claim, the claimant himself examined as P.W.1 apart from examining the doctors as P.Ws.2 & 3 and got marked

Exs.A.1 to A.11 and Exs.X.1 & X.2. The respondents did not adduce any oral evidence, but the first respondent marked Ex.B.1 copy of insurance policy.

8. There is no dispute with regard to the rash and negligent driving of motorcycle on the part of the third respondent herein. Though the first respondent took a plea that the negligence is on the part of the appellant/claimant, it did not choose to adduce any supporting evidence. It simply filed and marked Ex.B.1-copy of insurance policy. In such circumstances, the tribunal considered and relied on the oral evidence of P.W.1 to the effect that while he was proceedings on his cycle on 18.8.2006, the third respondent drove the motorcycle bearing registration No.AP 5AE 8596, came in rash and negligent manner with high speed and dashed from his back, due to which, he fell down on the road and sustained injuries. Though P.W.1 was cross-examined at length, nothing contra was elicited.

9. Ex.A.1 is the copy of F.I.R. in Crime No.96 of 2006, which shows that P.W.1 himself presented the complaint at Ravulapalem Police Station against the third respondent. Ex.A.3 is the copy of charge sheet, which was filed by the investigating officer after thorough investigation with a finding that the third respondent rode the motorcycle with rash and negligent manner and hit the appellant/claimant from his back. The Motor Vehicle Inspector, under Ex.A.A.2 opined that the accident was not due to any mechanical error.

10. In view of the above facts and circumstances, I am of the considered view that the tribunal having considered the oral and documentary evidence i.e. Exs.A.1 to A.3, came to the right conclusion that the accident was due to rash and negligent driving of motorcycle by the third respondent.

11. As already discussed above, the first respondent simply filed copy of insurance policy marked as Ex.B.1 but did not choose to adduce any oral or documentary evidence in support of its contentions. Similarly, the appellant/claimant also filed copy of policy marked as Ex.A.6. There is no dispute that the offending vehicle was insured by second respondent-owner with the first respondent under Ex.B.1 (A.6), which is valid from 25.3.2006 to 24.3.2007. Whereas the accident was occurred on 18.8.2006, by which date, the policy under Ex.B.1 (A.6) was in force. Ex.A.5 is the R.C. of motorcycle, which shows that the second respondent is the registered owner of the offending motorcycle. Though the first respondent took the plea that the rider of the motorcycle-third respondent has no valid and effective driving licence, did not choose to adduce any oral or documentary evidence. Ex.A.4 is the driving licence of third respondent, which shows that he possessed a valid driving licence to drive the motorcycle. Accordingly, the tribunal found that the third respondent, rider of the motorcycle, is having non-transport driving licence to ride the motorcycle with gear.

12. The contention of the appellant/claimant is that due to the fractured injury, he sustained disability, which is permanent in nature.

The consistent evidence of P.W.1 is that due to the impact of hit by the motorcycle from his back, he fell down on the road and sustained grievous bleeding injuries to his right leg and other parts of the body. He was shifted to Sri Chaitanya Orthopaedic hospital, Tanuku.

13. He was admitted as inpatient in Sri Chaitanya Orthopaedic hospital on 18.8.2006, operation was done to his right leg and was referred to Medicare Hospital, Rajahmundry on 20.8.2006, where he was treated as inpatient from 20.8.2006 to 20.9.2006 and plastic surgery was done to him periodically and after completion of plastic surgery again he went to Sri Chaitanya Hospital, Tanuku, where he was advised to take bed rest and medicines. He deposed that both bones of his right leg above the ankle joint were broken and due to loss of flesh, the broken bones exposed and blood was oozing from the injury. Operation was done to right leg and steel plates were fixed to keep the bones intact and he was shifted to Medicare hospital for plastic surgery and skin grafting. Even after discharge from the hospital, he had taken treatment as an outpatient.

14. P.W.2 is the doctor, who initially treated the appellant/claimant at Sri Chaitanya Orthopaedic hospital at Tanuku. He deposed that P.W.1 was admitted in the hospital on 18.8.2006 and on examination, he found (i) open injury to right leg measuring about 8" x 4" with bone deep with exposure of fractured end and protruded through the wounds. X-ray confirmed fracture of the tibia and fibula.

He conducted operation on 19.8.2006 with interlocking plug bone grafting. After operation on 20.8.2006, he was referred to the plastic surgeon. The appellant was allowed to walk with the support of walker for three months. During the follow up treatment, he came to him with pain at the fracture site in the month of February, 2007 and it was found that the nail was broken due to infection at the fracture site. Hence, he was again operated under the care of plastic surgeon. Ex.X.1 is the case sheet of hospital and Ex.A.7 is the wound certificate issued by P.W.2.

15. Though P.W.2 stated that there is disability permanent in nature, he could not specify the percentage of disability, more so, P.W.1 is a rice mill operator and according to his evidence, he can only switch on the machine in the rice mill. In the cross-examination, P.W.2 stated that the appellant can attend light works due to shortening of leg. He further stated that as per the X-ray (Ex.X.2), the fracture is united, which shows that the appellant/claimant can attend the rice mill work as usual, which is nothing to do with the fracture sustained to the right leg. There may be some discomfort while walking and attending the works, which itself became a permanent disability and that the reason why, the doctor, who treated the appellant is the proper person to speak about the nature of injury, but he stated that he cannot say the percentage of disability.

16. The tribunal having considered the oral and ocular evidence of P.Ws.1 to 3 and documentary evidence Ex.A.7 would

certificate, granted an amount of Rs.15,000/- under the head 'injuries', which is, in my opinion, very meagre. According to the evidence of appellant as P.W.1, which is corroborative with the evidence of P.Ws.2 and 3 and supported by wound certificate-Ex.A7 and X-ray-A.10, P.W.1 sustained fracture of tibia and fibula and he underwent three surgeries and after removal of screws, POP was applied and the same was removed after three months. Though P.W.2 did not state the percentage of disability, certainly, there is a discomfort for the appellant while attending his works. Taking into consideration the nature of injury and pain suffered by the appellant, awarding a sum of Rs.15,000/- under the head of 'injury' is meagre and the same is enhanced to Rs.55,000/-.

17. P.W.3 is the doctor, whose evidence is that P.W.1 was admitted in his hospital at Rajahmundry on 24.2.2007 and was performed operation on 28.2.2007 for flap cover and non-union of both bones of right leg. At the time of surgery, P.W.1 had non-union of both the bones of right leg and he issued Ex.A.8 medical bills. After conducting the operation, the progress of wound is satisfaction. During the cross-examination, P.W.3 stated that the operation conducted by him is a reconstructive surgery, which is a part of treatment. It is not a cosmetic surgery. Hence, the evidence of P.W.3 is in support of Ex.A.8-medical bills and to show that he conducted skin grafting for the wound sustained by the appellant.

18. In the decision reported in **Sanjay Kumar v. Ashok Kumar and another** ¹ the Apex Court reiterated the guidelines and heads for awarding compensation in cases of disability due to a motor accident, laid down by it in **Raj Kumar v. Ajay Kumar** ², which reads thus:

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability;

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage)

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv).”

19. In the present case, the tribunal awarded a sum of Rs.10,000/- towards shock, pain and suffering taking into consideration Ex.A.7 wound certificate and Ex.A.8 medical bills, which is meagre in view of the nature of injury received by the appellant and the same is enhanced to Rs.12,000/-.

¹ ((2014) 5 SCC 330)

² (2011) 1 SCC 343

20. The tribunal considered Ex.A.11 income certificate of the appellant, wherein his income is assessed at Rs.3,000/- per month. Having considered the evidence of P.Ws.2 and 3 and medical records Exs.A.7 to A.10 and recovery period of three months as deposed by the appellant, the tribunal awarded a sum of Rs.9,000/- towards loss of earnings during the period of treatment, which is just and reasonable. Further the tribunal considering the fact that the appellant was first admitted at Sri Chaitanya Orthopaedic hospital at Tanuku and was later referred to the hospital at Rajahmundry for reconstructive surgery and as he is a resident of Kammarivaripalem of Ravulalpalem Mandal, awarded a sum of Rs.5,000/- towards attendant and transportation charges, which is in my opinion, is very meagre, and the same is enhanced to Rs.10,000/-.

21. Admittedly, the appellant took treatment for three months and even after initial treatment, he was again operated on 28.2.2007 for flap cover and non-union of both bones of right leg and even subsequent to the discharge, he has taken follow up treatment. In such circumstances, awarding a sum of Rs.3,000/- by the tribunal towards extra-nourishment and special diet is very meagre and needs modification and the same is enhanced to Rs.10,000/-.

22. Coming to the medical bills, it is pertinent to note that the tribunal while considering Ex.A.8 bills, refused to allow a bill for an amount of Rs.25,000/- and another bill for Rs.5,000/- on the ground that they do not contain any descriptive particulars and the name of the

patient. Similarly, another bill dated 14.3.2007 for Rs.18,720/- was not considered on the ground it did not support the medical prescription. In this regard, it is pertinent to mention the evidence of doctor-P.W.3, who categorically deposed that Ex.A.8 bill was issued by him, which is true and genuine. P.W.2, another doctor, also deposed that P.W.1 purchased the medicines as per the prescriptions and the appellant required another operation for removal of screws in the injury, for which he also incurred certain amounts. Since the evidence of P.W.3 is that he had issued medical bills under Ex.A.8 and the medicines were purchased under proper prescriptions of P.Ws.2 and 3, the rejection of the claim by the tribunal for the bills merely on the ground that those bills did not contain descriptive particulars of the appellant is perverse. In view of the evidence on record, the appellant is entitled to the entire amount covered by Ex.A.8-bills which comes to Rs.1,48,820/-.

23. Thus in all, the appellant is entitled to the reasonable compensation of Rs.2,44,820/- (Rs.55,000/- + Rs.12,000/- + Rs.9,000/- + Rs.10,000/- + Rs.10,000/- + Rs.1,48,820/-).

24. In the result, the appeal is partly allowed modifying the award and enhancing the compensation awarded by the Tribunal from Rs.1,47,000/- to Rs.2,44,820/- with proportionate costs and interest at 7.5% per annum from the date of the petition i.e., 4.1.2007 till realization against respondents 1 to 3 jointly and severally.

The first respondent is 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.

07th November, 2017

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JUSTICE N.BALAYOGI

