

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 1328 of 2009

JUDGMENT:

1. The appellant/claimant aggrieved by the Award and decree dated 23.06.2008 passed in M.V.O.P.No.1662 of 2006 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-XIII Additional Chief Judge, City Civil Court (FTC), Hyderabad, preferred this appeal for the following among other grounds that the Tribunal erred in considering the disability at 20% in spite of disability suffered by him (appellant/claimant) was assessed at 45% by the Medical Board and that though the appellant was a motor mechanic, the Tribunal erred in assessing the income at Rs.1,500/- per month, instead it ought to have considered the income at Rs.3,000/- per month.

2. The Tribunal also failed to consider the loss of earnings at 100%. Towards pain and suffering undergone by him, the Tribunal simply awarded Rs.5,000/- , instead it ought to have awarded Rs.20,000/- under the said head. Further, the interest awarded by the Tribunal at 7% is contrary to settled law and it ought to have awarded interest at 9% per annum.

3. The brief case of appellant/claimant is that on 09.04.2006 while the appellant was proceeding on CT-100 motor

cycle bearing No.T/R.9694 slowly and on the extreme left side of the road, at that time one lorry bearing No. AP 31 U 4377 having driven by its driver with high speed and in rash and negligent manner, came on its wrong side and dashed the motor cycle. As a result of sudden impact, the appellant/claimant fell down from the motor cycle and the said lorry ran over his right hand. In the said accident, the appellant/claimant sustained crush injuries to his right hand, fracture to head and other injuries all over the body. The appellant/claimant is still undergoing treatment and there is every possibility of amputation to right hand.

4. The appellant/claimant was aged about 22 years as on the date of accident; was a motor mechanic and running the work shop by earning a net profit of Rs.10,000/- per month. The appellant/claimant was an income tax assessee. He spent huge amount for treatment.

5. Before the Tribunal, the first respondent—owner of the crime lorry contested the claim petition contending that the lorry was insured with the second respondent and policy was in force. He further contended that the accident occurred due to the rash and negligence on the part of the appellant/claimant in driving the motorcycle and there is no negligence on the part of the driver of the lorry. He further contended that by virtue of the policy in force, the second respondent has to indemnify the appellant/claimant.

6. The second respondent-Insurance Company contended that the lorry bearing No.AP 31 U 4377 was not insured with it and it did not involve in the accident. It further contended that the medical record is fictitious and fabricated and it was created for the benefit of the appellant/claimant. The Insurance Company is liable only when the vehicle owner has complied with the policy conditions and the statutory obligations of the MV Act.

7. Based on the aforesaid pleadings, the Tribunal framed the following issues for settlement.

1. Whether the accident resulting in injuries to the claimant occurred owing to the rash and negligent driving of the driver of lorry bearing No. AP 31U 4377 ?
2. Whether the claimant is entitled for compensation and if so, to what amount, from whom, and,
3. To what relief ?

8. In order to prove or otherwise of the claim, on behalf of the appellant/claimant, P.Ws.1 to 3 were examined and Exs.A.1 to A.11 were got marked. On behalf of the respondents, no witness was examined, however, Ex.B.1 policy was got marked.

9. The Tribunal partly allowed the claim by awarding Rs.1,09,400/- against first and second respondents with interest at 7% per annum and directed the respondents to deposit the

compensation amount within three months from the date of the Award.

10. Learned Counsel for the appellant/claimant submits that the accident was due to the rash and negligent driving of the driver of lorry bearing No.AP 31U 4377 which belongs to the first respondent and insured with the second respondent.

11. On the other hand, learned Counsel for the second respondent contended that there is no negligence on the part of the driver of the lorry and the accident was due to the negligence of P.W.1 himself.

12. To establish the negligence, there is oral evidence of P.W.1 besides documentary evidence under Ex. A.1-FIR, Ex.A.2—Charge sheet and Ex. A.3—scene of offence (sketch plan).

13. The clinching evidence of P.W.1 is that while he was proceeding on CT-100 motor cycle bearing No.T/R.9694 slowly and on the extreme left side of the road, and when he was reaching TS culvert, Nachaaram, at that time one lorry bearing No. AP 31 U 4377 having driven by its driver with high speed and in rash and negligent manner, came on its wrong side and dashed the motor cycle. As a result of sudden impact, the

appellant/claimant fell down from the motor cycle and suffered fracture injuries.

14. Ex.A.1 is the copy of FIR, which was presented at earliest point of time pursuant to the complaint given by one Bhasker, who is the brother of P.W.1. In the complaint, it was specifically asserted the manner in which lorry bearing No.AP 31U 4377 caused accident. The Investigating Officer after thorough investigation filed Ex. A.2—Charge Sheet and Ex. A.4—Observation report wherein it was specifically mentioned that the driver of the crime lorry came on extreme right side by wrong way and while overtaking another vehicle with high speed and in rash and negligent manner, dashed the motor cycle which was driving by P.W.1 at that point of time.

15. The Tribunal having marshalling the facts and appreciation of oral and documentary evidence at length, more particularly in the absence of rebuttal evidence from the side of the respondents, came to the right conclusion that the accident was due to the rash and negligent driving of the driver of lorry bearing No. AP 31 U 4377, which is legal and valid.

16. With regard to the injuries sustained by P.W.1, besides his evidence, there is corroborative evidence of P.Ws.2 and 3 who treated P.W.1 and did skin grafting. It is the clinching

evidence of P.W.1 that on 9.4.2006, P.W.2—Dr.Y.S.N. Murthy, Orthopedic Surgeon and P.W.3---Dr.Sudhakar, Plastic Surgeon treated him. His evidence is further clinchingly corroborated by the evidence of P.Ws. 2 and 3 that P.W.1 came to the hospital on 9.4.2006 and he was admitted in the hospital on the same day. The oral evidence of P.W.3 corroborates the evidence of P.W. 2 that while P.W.1 was under the care of P.W.2, on 9.4.2006, he was referred to him (P.W.3) during the course of treatment. On 22.4.2006 skin grafting was done and discharged on 28.4.2006, which is clear from Ex.A.5—Discharge card, Ex.A.6—Out patient consultation card and Ex.A.3—Wound certificate. The nature and gravity of injuries sustained by P.W.1 in the accident were spoken by P.Ws. 2 and 3, whose evidence was supported by Ex.A.3—Wound Certificate, which establish that P.W.1 sustained (i) compound fracture Head of Second right Metacarpal, (ii) Compound fracture Base of Fifth right proximal and (iii) compound fracture Distal end of right radius and wound debridment was also done to P.W.1. P.Ws 1 to 3 were cross examined at length, but nothing relevance was elicited from their evidence.

17. It is the further evidence of P.Ws.1 to 3 coupled with documentary evidence at Exs.A.5 and A.6 that on 10.04.2006, amputation was done at the fracture level and base of the proximal of little finger of right hand on 17.4.2006. P.W.3—Dr.G.V.Sudhakar, Plastic Surgeon did split thickness skin grafting

on 22.4.2006 and thereafter P.W.1 was discharged on 28.4.2006 with a advise to come for follow up treatment regularly. P.W.2 specifically stated that on 23.5.2006, P.W.1 came to the hospital for follow up treatment and due to amputation of little finger of right hand, there was discomfort to P.W.1 to carry on mechanical works. The medical prescriptions and medical reports under Exs.A.7 to A.9 were confronted by P.W.3 under whom P.W.1 took treatment. When P.W.1 came up for follow treatment on 23.05.2007, certain wounds were found to be in healing position. X-ray films are at Ex.A.11 which had been taken on 9.4.2006, 10.4.2006, 18.4.2006 and 26.9.2006, as per which, two fractures were united and amputation of right little finger was done.

18. With regard to disability, admittedly P.Ws. 2 and 3 have not issued any disability certificate. P.W.3 was cross examined with regard to the disability suffered by P.W.1 and during re-examination by claimant, it was elicited that on 23.7.2007, P.W.3 saw P.W.1 and found that gulls were slotted well and they were adherent to the cudaline bone and the fifth finger is missing from M.P. Joint (knuckle) level, and found flumine deformity at 2nd, 3rd and 4th fingers Hyperextension at M.P. joints. Hand was adducted; flexed a thumb at 45 and there was no active movement at fingers. As per Ex.A.6, claimant has suffered 40% to 45% disability to right hand. Ex. A.10-Disability certificate was issued by the medical board, as per which, disability sustained by

P.W.1 was assessed at 45%. As already discussed above, even as per P.W.2, the doctor who treated PW.1, there was loss of only little finger by way of amputation. Even then also, the appellant/claimant can do other works and carry on mechanical works even without little finger though there could be discomfort as stated by P.W.2.

19. The Tribunal having considered the oral evidence of P.Ws.1 to 3 and documentary evidence at Exs. A.3, A.5 and A.11, rightly assessed the disability sustained by P.W.1 at 20%, because the amputation was only to little finger of right hand, Thus there is no error on the part of Tribunal while assessing the disability sustained by P.W.1 at 20%.

20. With regard to age, admittedly the appellant/claimant has not produced any documentary evidence. In the claim petition, he has mentioned his age as 22 years. In Ex.A.3–Wound Certificate. Ex.A.5–Discharge card and Ex. A.10–disabilitycertificate, the age of the claimant was noted as 21 years.

21. In the absence of any documentary evidence, the Tribunal rightly relied on Exs. A.2 to A.5 in assessing the age of the appellant/claimant at 21 years. There is no error or illegality in fixing the age of P.W.1 as-21 years as on the date of accident.

22. The only dispute is with regard to the income of the appellant/claimant. The evidence of P.W.1 is that he was a motor mechanic and he used to earn Rs.10,000 per month. Though in the evidence, P.W.1 stated that he is the income tax assessee, but he has not produced any copy of such tax returns. In the absence of any such corroborative oral or documentary evidence, necessarily the income of the appellant/claimant has to be assessed based on the cost of living and minimum wages and occupation of the claimant. But, the Tribunal assessed the income of the appellant/claimant on the ground that a worker or agricultural coolie gets Rs.50.00 per day and since he was a mechanic, his income could be assessed at Rs.50/- per day. Accordingly, the Tribunal arrived at Rs.1500/- per month, which is invalid and perverse.

23. Pertinent to see, even as per minimum wages, a labour would get Rs.3000/- per month normally. Accordingly, I find that the Tribunal without taking into consideration the cost of living and minimum wages of a worker as on the date of accident, assessed the income of the claimant at Rs.50/- per day or 1500/- per month and awarded the compensation, which is illegal and warrants modification. In the facts and circumstances discussed hereinabove, I find that P.W.1 was 21 years as on the date of accident and he used to earn Rs.3000/- per month.. Though P.Ws. 2 and 3 deposed that he suffered 45% disability, as he lost

only little finger of right hand, the Tribunal rightly assessed the disability at 20%.

24. As per the decision of the Apex Court in SARLA VERMA Vs DTC {(2009) 6 SCC 121}, the appropriate multiplier for the age of 21 years is '18'. The normal compensation would then work out for 20% of the disability to be $\text{Rs.}36000 \times 18 \times 20\% = \text{Rs.}1,29,600/-$.

25. Admittedly P.W.1 was in the hospital as in-patient from 09.04.2006 to 28.04.2006 for a period of 19 days. He sustained grievous injuries as mentioned in Ex. A.3, namely, (i) compound fracture Head of Second right Metacarpal, (ii) Compound fracture Base of Fifth right proximal and (iii) compound fracture Distal end of right radius. During the said period, his little finger was amputated. On account of the same, it can be assumed that he might have suffered lot of pain, for which, the Tribunal awarded only Rs.5,000/- which requires modification. Having considered the pain suffered by P.W.1, it is just and reasonable to award Rs.15,000/- towards pain and suffering.

26. The Tribunal refused to award any compensation towards loss of earnings. As already discussed above, P.W.1 was in the hospital from 09.04.2006 to 28.04.2006 for 19 days as per Ex. A.5—Discharge summary. During the said period, there was

certainly loss of earnings to P.W.1, which the Tribunal missed to consider. As monthly income of P.W.1 is fixed at Rs.3,000/- per month hereinabove, for the period of hospitalization, awarding of Rs.2,000/- towards loss of earnings is just and proper.

27. The Tribunal refused to award Rs.1,000/- towards damages to the clothing as claimed by P.W.1. Certainly there were damages to the clothing because P.W.1 suffered three fracture injuries to his right hand in the accident. Hence, having regard to the injuries suffered by P.W.1 and damages said to have been caused to his clothing on account of the injuries, it is just and reasonable to award Rs.1000/- towards damages of clothing as claimed by him.

28. Further, no amount was awarded to P.W.1 towards extra nourishment. Admittedly the evidence of P.Ws. 2 and 3 coupled with documentary evidence at Exs.A.3 and A.5 goes to suggest that P.W.1 suffered three grievous fracture injuries to his right hand and little finger was amputated. He was in the hospital for 19 days and also taking treatment after discharge from the hospital. Certainly the nature of injuries suffered by P.W.1 requires nourished food, for which, no amount was awarded. Having regard to the same, it is just and proper to award Rs.20,000/- towards extra nourishment, which meets the ends of justice.

29. The Tribunal, based on the medical prescriptions and bills vide Exs.A.8 and A.9 respectively awarded Rs.42,740/- which does not warrant any interference.

30. The Tribunal also awarded Rs.1,000/- towards transportation. In the absence of any proof of receipts produced by P.W.1, it does not warrant any interference.

31. Thus, in all, the appellant/claimant is entitled to receive the total compensation of Rs.1,29,600/- + 15,000/- + 2,000/- + 1,000/- + 20,000/- + 42,740/- + 1,000/- = Rs.2,11,310/-.

32. The first respondent being the owner of the offending lorry bearing No.AP 31 U 4377 and the second respondent being its insurer are joint and severally liable to pay the said compensation.

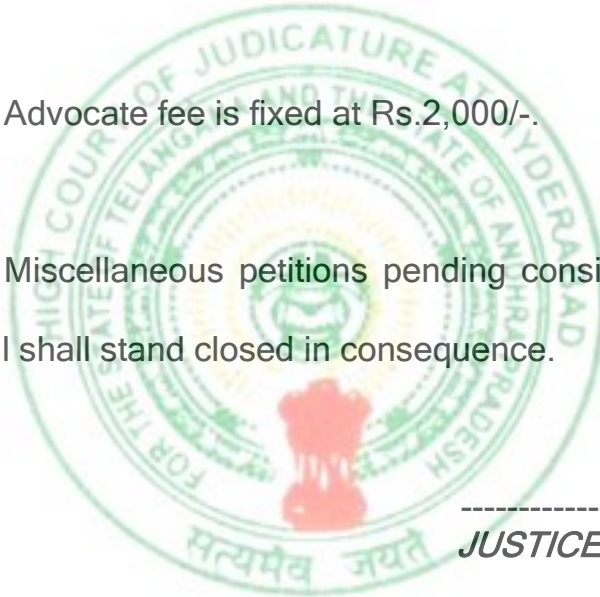
33. Accordingly the appeal is partly allowed with proportionate costs and the Award and Decree dated 23.06.2008 passed in M.V.O.P.No.1662 of 2006 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-XIII Additional Chief Judge, City Civil Court (FTC), Hyderabad, is modified to the extent indicated hereinabove.

34. Consequently, the respondents are directed to deposit the total compensation amount of Rs.2,11,310/- together with interest at 7.5% per annum from the date of petition i.e.10.05.2006 till the date of deposit, after deducting the amount if any already paid, within a period of thirty days from the date of receipt of a copy of this judgment.

35. On such deposit is being made, the appellant/claimant is permitted to withdraw the said amount.

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

37. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.



JUSTICE N. BALAYOGI

DATED -----August, 2017.
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