

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 1174 of 2008

JUDGMENT:

1. The appellant/claimant aggrieved by the Award and decree dated 10.01.2008 passed in OP.No.735 of 2006 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar, preferred this appeal on the following among other grounds that the Tribunal ought to have considered that the appellant/claimant suffered sever head injury on the right frontal region, fracture of shaft right tibia etc in the accident and took treatment at Apollo Hospital, at Hyderabad and during the said period, for about five months, i.e. from 02.01.2006 to 04.06.2006, he could not attend his duties, thereby there is total loss of monthly gross earnings of Rs.58,022/-, but the Tribunal erred in assessing the loss of monthly earnings at Rs.7,500/-, which is contrary to law.

2. It is contended that the Tribunal erred in taking the claimant's negligence at 1/3rd in the absence of any rebuttal evidence adduced by the respondents and reducing the proportionate extent of compensation out of the total extent of compensation payable to the claimant which is contrary to law.

3. It is contended that the contributory negligence ought not to have been alleged on the part of the claimant merely on assumptions and presumptions. The Tribunal erred in awarding meager amount of Rs.10,000/- towards pain and suffering and Rs.5,000/- towards extra nourishment as against the gravity of injuries and period of treatment, mental agony, pain and suffering undergone by him.

4. It is further contended that the Tribunal ought to have considered the evidence of P.W.3 who deposed that the appellant/claimant had to undergo future surgery for removal of the implants which costs about Rs.50,000/- and ought to have awarded the same. He lastly contended that the Tribunal erred in not awarding any amount towards repairs of motor cycle which is around Rs.20,000/-.

5. The case of second respondent-APSRTC is that the accident was due to the rash and negligence on the part of the appellant/claimant himself who rode the motor cycle and he himself dashed against the right side bumper of the bus and fell down. At the time of accident, the appellant/claimant and pillion rider were in drunken condition and hence the claimant is not entitled to receive any compensation.

6. The case of the appellant/claimant was that he was aged about 46 years and was working as Tradesman Helper in GDK-10-A Incline RG-II of Singareni Collieries Company Limited. On 1.1.2006 while he (appellant/claimant) along with Pilli Sambaiah proceeding on a Hero Honda Motor Cycle bearing No. AP.15L-3293, and when they reached B.T. Road near 10 Incline mine, a RTC bus bearing No. AP 10Z 7345 came in opposite direction, in rash and negligent manner, with high speed and dashed the motor cycle, as a result of which, the pillion rider and the appellant/claimant fell down and sustained injuries. The pillion rider died on the spot.

7. Immediately after the accident, the appellant/claimant was shifted to Apollo Hospital, Hyderabad wherein he undergone surgery. It is his further case that he sustained head injury with right frontal contusion and fracture of shaft right tibia. He underwent surgery for the fracture of shaft right tibia on 3.1.2006 and necessary implants were inserted and he was in-patient in the Apollo Hospital from 1.1.2006 to 4.2.2006. He was discharged from the hospital with POP to right leg with an advice to have follow-up treatment for six months and POP was removed after 90 days and during the said period of 90 days there was lack of income to the tune of Rs.60,000/-. He spent Rs.20,000/- towards repairs of the motor cycle and Rs.30,000/- towards treatment, transportation and extra nourishment.

8. Before the Tribunal the following issues were framed for settlement:

1. Whether the accident took place due to the rash and negligent driving of the vehicle i.e. APSRTC bus bearing No. AP 10Z 7345 by its driver?
2. Whether the petitioner is entitled to compensation, if so, to what extent and from whom?
3. To what relief?

9. In order to prove the claim, on behalf of the appellant/claimant, P.Ws.1 to 3 were examined and Exs.A.1 to A.25 were got marked. On behalf of the respondents, no oral or documentary evidence was adduced.

10. The appellant/claimant himself was examined as P.W.1. In his evidence affidavit, he extracted the pleadings of the claim petition. He clearly stated that at the time of accident, he drove the motor cycle bearing No. AP 15L 3293 and one Pilli Sambaiah was the pillion rider on the said motor cycle. At about 1.00 PM of 1.1.2006, when they reached BT road, near 10 Incline mine, one RTC bus bearing No. AP 10Z 7345 came in opposite direction, in rash and negligent manner, with high speed and dashed the motor cycle. During the cross examination, he clearly stated that he noticed the bus coming in opposite direction at a distance of 1/4th kilometer. At the accident spot, it was a straight

road. The RTC bus dashed the motor cycle from the front side. During the cross examination, though he stated that he had not filed RC of the motor cycle and also his driving licence, but, however, subsequently, he produced RC of the motor cycle under Ex. A.24 and his driving licence under Ex. A.25. The evidence of P.W.1 supported by Ex. A.24 goes to suggest that the appellant/claimant was the registered owner of Hero Honda Motor cycle bearing No. AP 15L 3293, and supported by Ex. A.25 goes to suggest that he was competent to drive the motor cycle. Therefore the Tribunal having considered the oral evidence of P.W.1 supported by Exs.A.24 and A.25 held that the appellant/claimant was the registered owner of Hero Honda motor cycle bearing No. AP 15L 3293 and that he possessed valid and effective driving licence to drive the motor cycle at the time of accident.

11. With regard to negligence, there is no rebuttal evidence produced by the second respondent. The burden is heavily on the second respondent to substantiate the plea of contributory negligence and that at the time of accident, the appellant/claimant was in drunken condition. P.W.1 denied the suggestion that at the time of accident, he was in drunken condition and that the accident was due to his rash and negligent driving of the motor cycle.

12. Ex.A.1- is FIR, Ex. A.2 is Charge Sheet, Ex. A.4- is Form No.54 and Ex. A.5 is MVI report. In Ex. A.2 there is clear assertion that the driver of the RTC bus bearing No. AP 10Z 7345 drove the bus in rash and negligent manner with high speed and dashed the Hero Honda Splendor motor cycle bearing No. AP 15L 3293, coming in opposite direction. The Investigating Officer after thorough investigation filed charge sheet against the driver of the RTC bus finding that the driver of the RTC bus bearing NO. AP 10Z 7345 having driven the bus in rash and negligent manner, with high speed dashed the motor cycle. The Motor Vehicle Inspector under Ex. A.5 opined that the accident was not due to any mechanical defect of the vehicle. In the case of ERRAMMA & ORS Vs. G. KRISHNAMURTHNY & ANR (AIR 201% SC 1145), the Apex Court after thorough consideration of the facts and legal evidence on record therein was of the view that the collision between the motor vehicles occurred when the respondent-Corporation bus was turning to its right side without showing the turning indicator to enter the bus depot. In the said case, the driver of the offending bus was negligent by not giving the right turn indicator and caused the accident. In view of the said fact, the Tribunal and High Court have erred in apportioning negligence at 25% on the part of the deceased and 75% on the part of the driver of the Corporation bus without evidence adduced in that regard by the respondent-Corporation. Whereas in the instant case, as already discussed supra, there is clinching evidence of P.W.1,

which is supported by Ex.A.1-FIR, Ex. A.2-Charge Sheet, Ex. A.4-Form No.54 and Ex. A.5 MVI report which clearly shows that the driver of the RTC bus drove the bus in rash and negligent manner, with high speed, came in opposite direction and dashed the motor cycle.

13. Though the second respondent gave a suggestion to P.W.1 that there were three other motor cycles on which the friends of P.W.1 were following his motor cycle at the time of accident; that all of them have tried to over take the motor cycles of others in a high speed, in rash and negligent manner. It was further suggested that P.W.1 was driving the motor cycle in drunken condition at the time of accident. But the second respondent did not adduce any evidence in support of their plea. It was noted in Ex. A.5 by the Motor Vehicle Inspector that the front bumper on right side of the RTC bus was bent and front right side head light was broken. But in respect of the damage caused to the RTC bus as noted by the Motor Vehicle Inspector in Ex. A.5, the second respondent did not adduce any oral or documentary evidence in support of the said damage. The Motor Vehicle Inspector is the proper person who recorded the above facts in Ex. A.5 to explain and state the manner in which, and, under what circumstances the front right side of the bus was damaged. But he is not examined.

14. The proper person/s to speak about the manner in which the accident occurred is/are the driver and conductor of the RTC bus. It is not the case of respondents that the driver and conductor are not available for their examination. Undoubtedly the driver and conductor were under the control of the respondents. Hence, non examination is fatal to their case.

15. After thorough consideration of the facts as stated by P.W.1 and legal evidence under Ex. A.1 to A.5, I am of the view that the driver of RTC bus drove the bus with high speed, in rash and negligent manner, without any proper care and caution and dashed the motor cycle which was riding by the claimant at the time of accident. The driver of the RTC bus should have kept in mind that he was driving the heavy passenger motor vehicle and it was necessary for him to take extra care and caution of other motor vehicles passed-by on the road while proceeding on the BT road. Had the driver of RTC bus taken sufficient care and caution and slowed down the bus, allowing reasonable provision for proceeding the vehicles on the left side of the road to pass smoothly, the accident would have been avoided. But he did not do so, Therefore, I am of the view that the Tribunal erred in misinterpreting the contents noted in Ex. A.5—MVI report that in view of front bumper on right side was bent and front right side head light was broken and damage was caused to the RTC bus, there was negligence on the part of the appellant/claimant at 1/3rd

and remaining 2/3rd was on the part of the driver of the respondent-Corporation bus without there being any evidence, oral or documentary, adduced by/on behalf of the respondents.

16. Having regard to the discussion made herein above, it is pertinent to observe based on oral evidence of P.W.1 and supported documentary evidence at Exs.A.1 to A.5 that the accident occurred solely on account of rash and negligent driving on the part of the driver of the RTC bus bearing No. AP 10Z 7345. Therefore the finding recorded by the Tribunal on the issue of contributory negligence on the part of P.W.1 is liable to be set aside. Accordingly the finding of the Tribunal that the appellant/claimant can be considered at 1/3rd negligence and to that extent the compensation has to be reduced is set aside as the same is contrary to law.

17. The contention of the appellant/claimant is that the Tribunal erred in assessing the monthly loss of earnings at Rs.7500/- for a period of five months and thereby erred in awarding total amount of Rs.37,500/- towards loss of income during treatment and bed rest period. The consistent evidence of PW.1 is that he sustained grievous injuries on head with right frontal contusion, fracture of shaft right tibia besides other bleeding injuries all over the body. Immediately after the accident, he was shifted to Apollo Hospital, Hyderabad, admitted as in-

patient, under went number of prescribed medical tests and also undergone surgery for fracture of shaft right tibia on 3.1.2006 and implants were inserted. For the head injury, right frontal craniotomy evaluation of Haematoma was done under GA on 3.1.2006. He was inpatient in Apollo Hospital from 1.1.2006 to 4.2.2006. Even after discharge, he was undergoing treatment and visiting hospital by engaging a private vehicle on hire from Kamanpur to Hyderabad. The proper person to speak about the injuries sustained by P.W.1 is the doctor who treated him in the hospital.

18. Dr. Balavardhan Reddy, consulted Orthopedic Surgeon was examined as P.W.3. The medical evidence of P.W.3 is that P.W.1 was admitted in Apollo Hospital, Hyderabad on 1.1.2006 at 10.12 PM with severe head injury with right frontal contusion and fracture shaft right tibia (left bone). For head injury he was treated surgically craniotomy for evacuation of haematoma by Neuro Surgeon, Dr. SSR Murthy. On 3.1.2006 for fracture tibia, he was treated with open reduction internal fixation with 12 hold Dynamic compression plate with 8 cortical screws and plates. He (appellant/claimant) was discharged on 4.2.2006. He further deposed that the appellant/claimant came for follow up treatment on 3.3.2006. P.W.1 was required to be re-operated for removal of implants and approximate expenditure would be Rs.50,000/-. During the cross examination, P.W.3 was suggested that the

expenditure required future operation for removal of implants could not be Rs.50,000/-.

19. Ex.A.3 is the CC of Injury Certificate which was confronted through P.W.3. Ex. A.6 is the MLC of the Department of Neuro Surgery of Apollo Hospital which discloses that P.W.1 was inpatient from 1.1.2006 to 4.1.2006. Ex. A.7 is the bunch of prescriptions; Ex. A.8 is the emergency admission certificate; Exs.A.13 to 18 are bunch of medical bills which include consultation charges. The Tribunal having considered Exs.A.3, A.6 to A.8 and A.13 to A.18 came to the conclusion that Ex. A.13 is the in-patient bill of Apollo Hospital for Rs.2,44,157.22 Paisa, out of which, Rs.2,00,000/- was already paid by way of advance. Ex. A.14, bunch of 10 bills are relating to payment of advance amounts and also final amount of Rs.44,158/- under Ex. A.13. In view of the same, the amount awarded by the Tribunal towards hospital bill at Rs.2,44,157/- needs no interference.

20. As discussed supra, Exs. A.13 to A.18 are the bunch of bills which include consultation charges. While Ex. A.13 is the in-patient bill of Apollo Hospital for Rs.2,44,157.82 ps, Ex. A.14 is the bunch of 10 bills which are relating to payment of advance amounts and final/balance amount of Rs.44,158/- under Ex.A.13. In view thereof, the Tribunal rightly held that the bunch of medical bills marked under Ex.A.14 need not be considered separately.

The compensation awarded by the Tribunal of Rs.2,44,157.82 ps towards hospital bill is based on the evidence on record. No rebuttal evidence is adduced by the respondents. In view of the same, the same is accordingly affirmed as discussed supra.

21. Ex.A.17 is the bunch of pharmacy bills indicating purchase of medicines worth of Rs.32,061/- and the Tribunal awarded the same based on Ex.A.17. Therefore the same need not be interfered with in the absence of rebuttal evidence from the side of the respondents.

22. Further as discussed supra, the appellant/claimant incurred expenditure of Rs.3,225/- towards transportation. In supported of the same, he filed Ex. A.20 duty sheet and Ex. A.21- bill receipt issued by KVS cabs indicating expenditure of Rs.3,225/-, which the Tribunal awarded the same. Since the amount of Rs.3,225/- awarded by the Tribunal towards transportation charges is based on Exs.A.20 and A.21 and there being no rebuttal evidence from the side of the respondents, the same does not call for any interference.

23. During the cross examination, P.W.1 admitted that he was paid salary during the leave period. P.W.2, in the chief affidavit stated that salary was paid for the period from 2.1.2006 to 4.6.2006 as he had availed leave available to him. To substantiate

the leave availed, P.W.2 produced Ex. A.11, leave details. Besides leaves availed under Ex. A.11, P.W.1 was also unauthorized absent to duty in the months from January, 2006 to June, 2006. The Tribunal considered all these facts and taken into consideration Ex. A.11–Certificate of absence to the duty for five months and also Ex. A.9–Salary Certificate for the month of August, 2006 which discloses his gross salary at Rs.12,142.30 Ps and net salary at Rs.9010.00, after deducting an amount of Rs.3132.30 Ps.

24. Ex. A.10 is the bunch of nine pay slips which discloses that gross salary of the appellant/claimant was 10,299.00 and net salary was Rs.7,400/- for the month of January, 2006; gross income of Rs.9,121.90 paise and net salary of Rs.6,040/- for the month of February, 2006; gross income of Rs.10,935.56 ps and net salary of Rs.7,620.00 for the month of March, 2006; gross income of Rs.11,365.00 and net salary of Rs.8,290.00 for the month of April, 2006; gross salary of Rs.5,486.00 and net salary of Rs.2,820.00 for the month of May, 2006; and, gross income of Rs.10,816.57 ps and net salary of Rs.7600.00 for the month of June, 2006. The Tribunal having considered Exs.A.9, A.10 and A.11, took the monthly average income of the appellant/claimant at Rs.7,500/- for the purpose of awarding leave salary for the period of five months during which he could not attend his duties.

25. P.W.2 admitted in his cross-examination that SCC Ltd would pay the salary for the days actually he worked and there would not be any payment for the non working days. Leave Application under Ex. A.11 was for the months from January, 2006 to June, 2006. The accident occurred on 1.1.2006 and he was inpatient in the Apollo Hospital from 1.1.2006 to 4.2.2006 and thereafter he was under bed rest for five months. So during the period covered by Ex. A.11, P.W.1 was under rest and therefore, he was paid salary for the days he actually worked. Ex. A.11 shows the days on which he was on leave. The pay slips under Ex. A.10, and salary certificate under Ex. A.9 go to show the gross salary of P.W.1 for the month of August, 2006 as Rs.12,143/- and net salary was Rs.9010.00. From Ex. A.11, it is clear that the appellant/claimant received salaries for the days actually he worked. Therefore, the Tribunal is right in taking average salary at Rs.7,500/- (taking into consideration the salary received by P.W.1 for the days actually he worked) and accordingly the Tribunal awarded compensation on account of loss of income at Rs.37,500/- for five months, which does not call for any interference.

26. Further the contention of the appellant/claimant is that the Tribunal awarded Rs.10,000/- towards pain and suffering ignoring gravity of injuries. The amount of Rs.10,000/- is not so

meager under the circumstances. P.W.1 sustained fracture of shaft right tibia and head injury. Considering the gravity of injuries sustained by the appellant, I am of the view that the compensation awarded by the Tribunal at Rs.10,000/- towards pain and suffering is the just compensation.

27. It is also contended that the Tribunal awarded compensation of Rs.5,000/- towards extra nourishment, which is very meager. Having considered the fact that the appellant/claimant was hospitalized from 1.1.2006 to 4.2.2006, for a period of one month and thereafter, he was completely advised bed rest for five months, the amount of Rs.5,000/- is meager and therefore, it requires modification. In view of the injuries sustained by the appellant and treatment undergone by him, I hereby award Rs.10,000/- towards extra nourishment.

28. Further, it is the contention of the appellant/claimant that the Tribunal did not consider Ex. A.19 which indicates purchase of spare parts of the damaged motor cycle. During evidence, P.W.1 stated that after the RTC bus hit the motor cycle, the RTC bus dragged the motor cycle to some distance, due to which, the motor cycle was badly damaged and he got it repaired by incurring expenditure of Rs.20,000/-. To substantiate the same, he filed Ex.A.19, which are cash memos issued by Sai Maruthi Motors dated 6.2.2006. The bills are issued on regular receipts.

Since the motor cycle was dragged to some distance, there is nothing to suspect Ex.A.19. However, there is no cross examination at all about Ex.A.19 and suggestion to P.W.1 with regard to repairing of motor cycle. The evidence of P.W.1 supported by Ex. A.19 well established that the appellant/claimant incurred expenditure of Rs.20,000/- for repairing the motor cycle. There is no rebuttal evidence from the side of the respondents. In view of the same, the appellant/claimant is entitled to receive the said amount towards repairing charges. and accordingly, Rs.20,000/- is awarded towards repairing charges to the motor cycle.

29. Further the Tribunal having discussed the evidence of P.W.3 that he conducted surgery for craniotomy for evacuation of haematomy; that on 3.1.2006 for fracture tibia, the appellant/claimant was treated with open reduction internal fixation with 12 hold dynamic compression plate with 8 cortical screws and plates and that the appellant/claimant needs to be re-operated for removal of implants which requires expenditure of Rs.50,000/-, however, no amount for future surgery was awarded, which is apparently error. Under Ex. A.13—discharge bill of Apollo Hospital, Rs.13,725.00 for room rent from 1.1.2006 to 4.2.2006, Rs.61995/- for nursing and hospital utilities, Rs.750/- for Anesthesia charges, Rs.9500/- for Anesthetist fee, Rs.56,500/- for surgeons fee etc., were charged. Since a surgery to be conducted

for removal of implants, an amount of Rs.20,000/- requires to be awarded towards expenditure of the same which will meet the ends of justice. Accordingly, I hereby award Rs.20,000/- towards future surgery for removal of implants and medicines.

30. In view of the discussion made in earlier paragraphs, I am of the considered view that there is no contributory negligence on the part of the appellant/claimant. The accident occurred solely on account of the rash and negligent driving of the RTC bus bearing No. AP 10Z 7345 by its driver. In view of the same, there is no need to deduct any amount of compensation to which the appellant/claimant is entitled to receive. Accordingly, the finding of the Tribunal that the appellant/claimant who was the rider of the motor cycle was also at fault and his negligence can be taken into consideration at 1/3rd and therefore the compensation has to be reduced from out of total compensation awarded, is set aside finding that since there is no contributory negligence on the part of P.W.1, the respondents are liable to pay the complete compensation. The Award is modified accordingly.

31. Thus, in total, the appellant/claimant is entitled to receive the compensation under various heads as follows:

a) Loss of income	Rs.	37,500.00
b). Pain and suffering	Rs.	10,000.00

c) Hospital bill	Rs. 2, 44,157.00
d) Purchase of medicines and investigation charges	Rs. 32,061.00
e) Transportation charges	Rs. 3,225.00
f) Extra nourishment	Rs. 10,000.00
g) Motor cycle repair charges	Rs. 20,000.00
f) Future surgery and medical expenses	Rs. 20,000.00

Total	Rs. 3,76,944.00

32. For the foregoing discussion and in the result, the appeal is partly allowed with proportionate costs, and the Award and decree dated 10.01.2008 passed in OP.No.735 of 2006 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar is set aside and modified to the extent indicated hereinabove. Consequently, the respondents are directed to deposit the total compensation of Rs. 3,76,944.00/- which can be rounded off at Rs.3,77,000/- together with interest at 7.5% per annum from the date of petition i.e., 05.09.2006 till the date of deposit, after deducting the amount if any already paid/deposited, within a period of thirty days from the date of receipt of a copy of this judgment.

33. On such deposit, the appellant/claimant is permitted to withdraw the said amount.

34. Advocate fee is Rs.2,000/-.
35. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 6th October, 2017.
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