

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.681 of 2009

JUDGMENT :

The appellant/claimant aggrieved by the Award and Decree dated 19.1.2006 in M.V.O.P. No.896 of 2005 on the file of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Wragal, preferred this appeal besides other grounds on the ground that the Tribunal erroneously taken the disability at 10% against the evidence of P.W.3 and Ex.A5 – disability certificate wherein the disability has stated to be 30%. It is further contended that the Tribunal ought to have granted interest at 12% per annum.

On the other hand, the respondent/APSRTC contended that at the time of accident the motorcycle was being triple ridden and the evidence to the effect that the motor vehicle was dragged from the front door up to back door is untenable.

Firstly, this is an appeal preferred by the claimant, but not the respondent-APSRTC. The appellant only questioned the Tribunal considering the disability at 10% in spite of the evidence of P.W.3 and Ex.A5 – disability certificate and further with regard to awarding interest and not disputing the rest of the award.

The evidence of P.W.1 is that on 5.9.2004, while P.Ghowru Naidu as a rider and himself as a pillion rider were proceeding on

Bajaj Pulsar two wheeler bearing No.AP 9DQ T/R 8715 from Ameerpet side to Kukatpally, on the way they stopped the vehicle at Sarathi Studio near left side foot path due to red signal. In the meanwhile, at about 18.30 hours APSRTC bus bearing No.AP 10 Z 3864 coming from Ameerpet side stopped behind them. At that time, the RTC bus driver started the bus in a rash and negligent manner with high speed and hit the motorcycle. During the cross-examination, P.W.1 stated that the bus was also moving at the time of accident. The suggestion to P.W.1, which was denied, is that the accident was not occurred on account of RTC bus or its rash and negligent driving of the driver and that they themselves responsible for the accident since the motorcycle was driven in a rash and negligent manner.

In Ex.A1 – F.I.R. the complainant stated that while he along with two others proceeding on the motorcycle to go to Siva Parvathi Talkies at Kukatpally and when they stopped the motorcycle at Saradhi Studio due to red signal, at about 6.30 PM the RTC bus bearing No.AP 10 Z 3864 coming from Ameerpet side stopped at the signal and within a minute after green signal, the RTC bus driver moved the bus with high speed and dashed the handle of their stationed motorcycle. The Investigating Officer, after thorough investigation, filed the charge-sheet under Ex.A3 stating that the driver of the RTC bus drove the bus with high speed and in a negligent manner and dashed to the halted motorcycle at Saradhi studio signal on 5.9.2004 at 18.30 hours. There are two pillion riders on the motorcycle.

Nowhere in the counter filed by the respondent, RTC took the plea that due to triple riding of the motorcycle, the accident was occurred. The settled law is that any amount of evidence adduced without a plea is inadmissible and it cannot be looked into. Even when P.W.1 was cross-examined, there was no suggestion as to the accident was occurred due to triple riding of the motorcycle. More so, the evidence of P.W.1 read with F.I.R. and charge-sheet goes to suggest that the driver of the RTC bus suddenly moved the bus with high speed and dashed the handle of the stationary motorcycle. In such circumstances, I find that the Tribunal, having considered both oral and documentary evidence on record, came to the right conclusion that the accident was occurred due to rash and negligent driving of the driver of the RTC bus bearing No.AP 10 Z 3864. Since there is no negligence on the part of two wheeler rider, then triple riding cannot be a mitigating factor to impose contributory negligence, more particularly since the RTC bus hit the stationary motorcycle.

The further contention of the appellant/claimant is that though disability was 30% as per the evidence of P.W.3 and Ex.A5, the Tribunal erred in considering the disability at 10%. The evidence of P.W.1 is that in the accident he sustained (i) grievous injury on right leg caused swelling and (ii) fracture injury of tibia and fibula right leg and other injuries all over the body. Immediately, he was shifted to Global Hospital in an ambulance, later shifted to Indo American Cancer Hospital & Research Center, Hyderabad. The Doctor in Indo

American Cancer Hospital is examined as P.W.2. His evidence is that on 6.9.2004, P.W.1 admitted in the Hospital with compound fracture of both bones of right leg with potts fracture of right ankle and x.ray was taken. The team of doctors assisted him in conducting the operation with interlocking nail of right tibia and screw fixation of ankle fracture on 22.9.2004 and he suggested that implants shall be removed within two years and discharged the P.W.1 on 2.11.2004. Exs.A8 to A10 are case sheet, estimate certificate and discharge bill respectively issued to P.W.1 by the Indo American Cancer Hospital & Research Center, Hyderabad. The only suggestion to P.W.2 is that the condition of the patient was normal and the operation can be done in any Government Hospital. Except that there is no dispute with regard to admission of P.W.1 on 6.9.2004 and discharge on 2.11.2004 and the treatment and surgery in the Indo American Cancer Hospital & Research Center, Hyderabad. Ex.A2 is the Medico Legal Record issued by Global Hospitals in which P.W.1 took treatment before admission in the Indo American Cancer Hospital & Research Center, Hyderabad.

P.W.3 is the Assistant Civil Surgeon in MGM Hospital. His evidence is that on 24.2.2005 he as a Member of the Medical Board examined P.W.1, assessed the disability which is around 30% due to post traumatic stiffness of right knee joint. Accordingly, they issued Ex.A5 – disability certificate. The only suggestion to P.W.3 is that in order to help P.W.1, he has issued Ex.A5, which suggestion was denied by him. Except that there is no suggestion. The Tribunal, while

discussing the evidence of P.Ws.2 and 3 and Ex.A5, its discretion is that P.W.3 is one of the Member of the Board who examined P.W.1 and issued Ex.A5. Ex.A5 is issued on 24.2.2005 long after the petitioner's discharge from the Indo American Cancer Hospital & Research Center, Hyderabad. It is not the evidence of P.W.2 that the fracture suffered by the petitioner would have led to stiffness of right knee. Such a discretion is unwarranted and P.W.2, even though a Doctor, cannot predict what is the effect of injury in future. P.W.3 is the proper person who examined P.W.1 and issued Ex.A5. The respondent does not dispute Ex.A5, except stating that it was issued only to accommodate P.W.1. There is no suggestion to P.W.3 with regard to discard of Ex.A5. More so, the Tribunal, having considered the evidence of P.Ws.1 and 2, came to the wrong conclusion stating that it is difficult to accept either Ex.A5 or the evidence of P.W.3 to prove the nature of disability suffered by the petitioner and further found that at best, the disability may be about 10% which has to be deduced.

There is no rebuttal evidence to the evidence of P.Ws.1 and 2 and the evidence of P.W.3, who is the Assistant Civil Surgeon, who assessed the disability on examination and also taking x.ray. According to him, the disability is certified under Ex.A5 may be around 30%. P.W.2 in the evidence clearly stated that a team of Doctors assisted P.W.2 in conducting the operation with interlocking nail of right tibia and screw fixation of ankle fracture on 22.9.2004 and

injuries are grievous in nature and he suggested for removal of implants within two years and that the patient/appellant suffers pain till implants are removed. Subsequently, P.W.3 examined the P.W.1 and issued Ex.A5 which is a genuine and reliable document, but however, since the Doctor stated that the disability is about 25% and also having considered the nature of injuries with compound fracture of both bones of right leg with potts fracture of right ankle and the disability is due to post traumatic stiffness of right knee joint which is permanent in nature, I presume the disability at 20%.

With regard to the income of P.W.1, there is evidence of P.W.1. Ex.A4 is the salary certificate according to which his monthly salary was Rs.2,500/- and he is a contract employee under Mr.Mohan Reddy. Ex.A4 – salary certificate further goes to suggest that the net salary of the petitioner is Rs.2,270/- per month. Thus, the Tribunal has rightly arrived at the monthly salary of the petitioner at Rs.2,500/- per month.

The age of the petitioner is mentioned as 25 years in Ex.A1 – F.I.R., Ex.A2 – Medico Legal Record issued by the Global Hospital and Ex.A3 – charge-sheet. Further, in Ex.A5 – disability certificate, the age of the petitioner is mentioned as 26 years. In the absence of any documentary evidence with regard to the birth and age, relying on the above Exs.A1, A2, A3 and A5, the age of the P.W.1 at the time of accident is considered as 25 years.

As per the decision of the Apex Court in *Sarla Verma v. DTC*¹ the relevant multiplier applicable to the age of the appellant is '18'.

The plea of deduction of 1/3rd towards personal expenses of the appellant/claimant is taken in this appeal for the first time and it is accepted.

As discussed supra, the monthly income of the claimant is Rs.2,500/- per month or Rs.30,000/- per annum. Out of the said income, 1/3rd has to be deducted towards his personal living expenses, which comes to Rs.10,000/- per annum and thereby the contribution to his family would come to Rs.20,000/- per annum. As per the decision of the Apex court in *Sarla Verma's case* (supra) the appropriate multiplier applicable for the age of the claimant is '18'. Then, the normal compensation would then work out for 20% of disability to be $20,000 \times 18 \times 20/100 = \text{Rs.72,000/-}$. Accordingly, the appellant/claimant is entitled to Rs.72,000/- towards loss of earnings on account of 20% disability instead of Rs.60,000/- granted by the Tribunal.

With regard to the future medical expenses, the claim is for Rs.30,000/-, but the Tribunal has granted only Rs.5,000/-. Normally Doctors will charge Rs.10,000/- to Rs.15,000/- for surgery and medical expenses for removal of screws in future. But, the Tribunal awarded Rs.5,000/-, which is very meagre. Therefore, I award an amount of

¹ (2009) 6 SCC 121

Rs.20,000/- towards future medical expenses for removal of screws in future which will meet the ends of justice.

With regard to other heads, the Tribunal has rightly granted an amount of Rs.10,000/- towards loss of earnings and Rs.1,000/- towards transportation. The Tribunal has also rightly granted Rs.69,186/- towards extra-nourishment and medical expenses, as the appellant was hospitalized for treatment from 6.9.2004 to 2.11.2004 and as he was unable to move from bed and continued to stay as on 10.11.2004 also.

Thus, in all, the appellant is entitled to compensation of Rs.1,72,186/-.

In the result, the appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.1,45,186/- to Rs.1,72,186/- with proportionate costs and interest at 7.5% per annum from the date of the petition till realization. The respondent is directed to deposit the amount 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.

JUSTICE N.BALAYOGI

24th October, 2017

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