

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 703 of 2009

JUDGMENT:

1. The appellant/New India Assurance Company Limited preferred this appeal aggrieved by the Award and decree dated 25.03.2006 passed in MVOP.No.244 of 2005 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-VI Additional District Judge, Warangal, Mahabubabad on the among other grounds that the Tribunal ought to have seen that there is no proof of income of the first respondent/claimant and the income taken by the Tribunal is on higher side. It is further contended that the Tribunal ought to have seen that the disability was only 15% (sic: 50%) and therefore awarding of Rs.74,880/- is incorrect. It is also contended that the Tribunal erred in granting Rs.32,000/- towards pain and suffering.

2. On the other hand, learned Counsel for the first respondent/claimant submitted that the first respondent/claimant is an agricultural labour and therefore he should not have birth certificate and that the Tribunal took his income in normal circumstances taking into consideration that an agricultural labour would earn Rs.3,000/- per month. He further contended that the Tribunal having considered the gravity of injuries and sufferance undergone by him granted just compensation which does not warrant any interference.

3. The case of the first respondent/claimant is that on 12.08.2004 at about 6.00 PM himself and others boarded the auto bearing No. AP 36 V 4800 to go to Kothaguda village and when the said auto reached near Ashok Nagar village, the second respondent drove the same in rash and negligent manner with high speed, due to which, the said auto turned turtle, as a result, the accident occurred, in which, the first respondent/claimant and others suffered grievous injuries.

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

- i) Whether the accident took place on account of the rash and negligent driving of the crime auto bearing No. AP 36V 4800 ?
- ii) Whether the petitioner is entitled to any compensation ? if so, to what amount and from whom ?
- iii) To what relief.

5. In order to prove the respective claims, on behalf of the first respondent/claimant, P.Ws.1 and 2 were examined and Exs. A.1 to A.6 were got marked. On behalf of the appellant and respondents 1 & 2, no evidence, either oral or documentary was adduced.

6. In this appeal, the appellant/Insurance Company does not dispute the rash and negligent driving of the auto bearing No. AP 36 V 4800 by the driver-second respondent.

7. With regard to the injuries, the evidence of P.W.1/claimant is corroborated by medical evidence of doctor who was examined as P.W.2-Dr.P.Surender, M.S. (Ortho) at Sri Ganesha Orthopedic Hospital, Hanamokonda. P.W.2 deposed that the first repondent/claimant suffered (i) fracture of right Zygomatic bone (face bone) and greater wing of sphenial bone- grievous injury ; (ii) Fracture of 5th, 6th, 7th ribs of right chest- grievous injury and (iii) sub-dural hemorrhage left occipital region- simple injury.

8. The unimpeachable evidence of P.Ws. 1 and 2 is that P.W.1 took first aid treatment prior to coming to Sri Ganesha Orthopedic Hospital and after the treatment in the said hospital, P.W.2 advised him to take bed rest for two months. P.W.2 deposed that injuries 1 and 2 are grievous in nature and Injury No.3 is simple in nature. P.W.1 incurred expenditure around Rs.16,000/- and suffered 15% disability. In view of the injuries suffered by P.W.1 in the accident, he was unable to lift the weights and unable to do hard work and unable to run. P.W.2 further deposed that the injuries suffered by P.W.1 are permanent in nature. During the cross-examination, P.W.2 clearly stated that he being M.S. (Ortho) and expert in Orthopadician, can assess the disability and give his opinion and accordingly at the time of recording his evidence in the presence of Advocate

Commissioner, he deposed that P.W.1 suffered 15% permanent disability.

9. Thus the evidence of P.W.1 corroborated by the evidence of P.W.2 and Ex.A.2-Wound Certificate well established that P.W.1/claimant sustained fracture of right zygomatic bone-grievous in nature, fracture of 5th, 6th 7th ribs of right chest-grievous in nature and sub dural hemorrhage of left occipital region-simple in nature. The medical evidence of P.W.2 supported by Ex. A.2 goes to suggest that P.W.1 suffered 15% disability, because of which, he was unable to do hard work, which is permanent in nature. The first respondent/claimant being agricultural labour was unable to attend the labour works due to the aforesaid injuries.

10. With regard to the age and income of the first respondent/claimant, there is evidence of P.W.1, who clearly stated that he is aged 34 years old as on the date of accident. He was an agricultural labour and was earning Rs.3,000/- per month. In Ex.A.2-Wound Certificate, the age of P.W.1 was mentioned as 34 years. The Tribunal considering that the Minimum Wages Board, Warangal fixed the minimum wages to an unskilled manual labourer at Rs.2,600/- per month, took the monthly income of P.W.1 at Rs.2,600/-; applied the multiplier '16' for the age of 35 years and assessed the loss of income for 15% disability at Rs.74,880/-.

11. The Tribunal considering the nature and gravity of the injuries, awarded Rs.32,000/- towards pain and suffering, The Tribunal further awarded Rs.15,000/- towards medicines and extra nourishment, Rs.1,000/- towards transport and Rs.500/- towards damage of cloths. The compensation awarded by the Tribunal under the aforesaid heads is considered to be just and reasonable.

12. The Tribunal considering that the claimant/P.W.1 was earning Rs.2,600/- based on the maximum wages fixed by Minimum Wages Board, Warangal, and he was advised two months bed rest for the recovery from fracture injuries, awarded Rs.5,200/- towards loss of earnings.

13. Thus, in all the Tribunal awarded Rs.1,28,500/- with interest at 7.5% per annum from the date of filing the petition till the date of deposit, directing the appellant and respondents 2 and 3 jointly and severally to deposit the said amount within thirty days from the date of award. The conclusions reached by the Tribunal in awarding the compensation are legal, valid and do not suffer from any legal infirmities warranting interference by this Court. The compensation awarded by the Tribunal is just and reasonable.

14. For the foregoing discussion and in the result, the appeal is dismissed confirming the Award and Decree dated 25.03.2006 passed in MVOP.No.244 of 2005 by the learned Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge, Warangal, Mahabubabad.

15. During the course of argument, learned Counsel for the appellant-Insurance Company submitted that they have deposited half of the compensation amount awarded by the Tribunal. Therefore, the appellant and respondents 2 and 3 are directed to deposit the remaining balance amount within thirty days from the date of receipt of a copy of the Award.

16. On such deposit, the first respondent/claimant is entitled to withdraw the same.

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

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

JUSTICE N. BALAYOGI

DATED 27th October, 2017.
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