

THE HON'BLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.1303 of 2009

JUDGMENT :

The appellant/claimant aggrieved by the Award and Decree dated 30.12.2005 passed in M.V.O.P.No.63 of 2003 on the file of the Court of the Judge, Family Court, Secunderabad, preferred this appeal besides other grounds on the grounds that the Tribunal ought to have granted the entire amount claimed and further that the claimant was inpatient from 26.9.1999 to 8.10.1999, underwent operation and again admitted in the Hospital at Jagtial and took treatment as inpatient from 22.11.2000 to 12.1.2001 by incurring Rs.1,20,000/- towards treatment. He became permanently disabled and there is loss of income.

None appeared for respondents and no arguments are advanced. Since the appeal is of the year 2009, I felt it necessary to pronounce the judgment on merits and accordingly it is pronounced as follows :

The claim of the claimant in brief is as follows :

On 25.9.1999 while the appellant/claimant was travelling as a pillion rider on scooter bearing No.AP 9 N 943 and reached near clock tower, jeep bearing No.ABR 9519 came in opposite direction with high speed in a rash and negligent manner and dashed the scooter, as a result the claimant sustained grievous injuries and became permanently

disabled and cannot pursue his profession. The claimant used to earn Rs.6,000/- per month.

The contention of respondents in the counter is that the accident was not due to the negligence of the driver of the jeep and it was only due to negligence of the appellant/claimant himself.

Basing on the pleadings, the Tribunal framed the following issues for trial :

1. Whether the petitioner met due to collusion between deceased met with fatal accident due to collusion between scooter bearing No.AP 9 N 943 and jeep bearing No.ABR 9519 resulting into injuries to the petitioner. (sic.)
2. Whether the accident did not occur due to rash and negligent driving of the jeep bearing No.ABR 9519.
3. Whether the petitioner is entitled for compensation, if so to what extent and from whom.
4. To what relief.

In support of the claimant, P.Ws.1 to 4 were examined and Exs.A1 to A12 were got marked. On behalf of respondents, none were examined and no document was marked.

The Tribunal considering the evidence of P.Ws. 1 and 2 corroborated and supported by Ex.A2 – F.I.R. and Ex.A1 – charge-sheet and considering the nature of injuries mentioned in Ex.A4 held that that the accident was due to rash and negligent driving of the driver of the jeep. It is further found that the evidence of P.W.1

supported by Ex.A3 – accident register, Ex.A4 – discharge card, Ex.A5 – discharge certificate, Exs.A6 to A10 bills and prescriptions, make it clear that P.W.1 sustained fracture of both bones of left leg, took treatment in Gandhi Hospital, later shifted to Vivekananda Hospital, Begumpet where he underwent operation on 03.10.1999. After discharge, again he admitted in Geetha Orthopaedic and Maternity Nursing Home at Jagtial, took treatment from 22.11.2000 to 12.1.2001 where bone grafting and nailing was done. Further, considering the evidence on record supported by Exs.A11 and A12 to the effect that the injured was doing business, the Tribunal awarded a compensation in lump sum of Rs.30,000/- with subsequent interest at 7.5% per annum. Except the amount of Rs.30,000/-, no amount was awarded under any head.

Now the point that arises for consideration is whether the findings of the Tribunal are void, suffering from legal infirmities warranting interference ?

The claimant himself examined as P.W.1 and the rider of the scooter bearing No.AP 9 N 943 is examined as P.W.2. The evidence of P.Ws.1 and 2 is consistent, corroborative and there is no rebuttal evidence. The consistent evidence of P.Ws.1 and 2 is that on 25.9.1999 while, P.W.1 as a pillion rider, P.W.2 riding the scooter bearing No.AP 9 N 943 towards Garden Restaurant and while they were in the process of taking a left turn proceeding on the extreme left side to go around the clock tower park, because of the existing one way

and when they were taking a left turn, in the mean time, a jeep bearing No.ABR 9519 came in opposite direction from the Garden Restaurant side towards Secunderabad station on extreme left side, which is wrong side, driven with high speed in a rash and negligent manner and dashed the scooter. Though P.Ws.1 and 2 are cross-examined at length, no favourable information could be able to elicit. The only suggestion is that there is no negligence on the part of the jeep driver. Further, the respondents gave contradictory suggestions to P.Ws.1 and 2. The suggestion to P.W.2 at one stage is that he has not witnessed the accident, at another stage the suggestion was that he went to the wrong side and dashed against the jeep and he was at fault. The suggestions go to suggest that respondents themselves were not certain whether the negligence was on the part of P.W.2 or on the part of the driver of the jeep. More over, there are Ex.A2 – copy of F.I.R., Ex.A1 – copy of the charge-sheet, Ex.A3 – certified copy of the accident register, according to which negligence is on the part of the driver of the jeep.

In Ex.A2, the earliest report, P.W.1 himself is the complainant wherein he specifically asserted that he was a pillion rider of LML Vespa bearing No.AP 9 N 943 and P.W.2 is the rider of the said vespa. At about 11.30 PM when they reached near clock tower and taking left turn, all of a sudden jeep bearing No.ABR 9519, drove in a rash and negligent manner, dashed the LML vespa. The Investigating Officer, after thorough investigation, filed Ex.A1 – charge-sheet against the driver of the jeep finding that the driver of the jeep bearing No.ABR

9519 drove the jeep in a rash and negligent manner on wrong side of the road and dashed the scooter driven by P.W.2.

Accordingly, the Tribunal, having considered the corroborative and consistent evidence of P.Ws.1 and 2 and documentary evidence of Exs.A1 to A3 came to the right conclusion that the accident was due to rash and negligent driving of the driver of the jeep and respondents failed to adduce any oral or documentary evidence to rebut the evidence of P.Ws.1 and 2 and prove that the negligence is on the part of P.W.2.

Coming to the injuries and compensation, the evidence of P.W.1 is that in the accident he sustained grievous injuries and accordingly shifted to the Gandhi Hospital and after few hours, he was shifted to Vivekananda Hospital, Begumpet where he admitted and was inpatient from 26.9.1999 to 8.10.1999 and underwent surgery on 3.10.1999 pertaining to fracture on his left leg and spent nearly Rs.35,000/- for treatment.

Ex.A4 is the discharge card of Vivekananda Hospital which shows that P.W.1 admitted in the Hospital on 26.9.1999, underwent surgery on 3.10.1999 and discharged on 8.10.1999. It also discloses that both bones of left lower leg were fractured. Ex.A6 is the medical bill for Rs.10,885/- issued by Vivekananda Hospital showing the expenditure incurred for treatment and operation in Vivekananda Hospital for which the claimant is entitled to Rs.10,885/-.

The evidence of P.W.1 further goes to suggest that after discharge from the Vivekananda Hospital as he was experiencing acute pain in fractured leg, he was again admitted in the Geetha Orthopaedic and Maternity Nursing Home at Jagtial, Karimnagar on 22.11.2000 and discharged on 12.1.2001 and during that period, he undergone surgery for the fractured leg and bone grafting and nailing was done all through this period. He was bed ridden and spent nearly Rs.56,350/- towards hospitalization and further amounts were spent for medicines. He was operated by Dr.B.Narahari, Orthopaedic Surgeon and his colleague Dr.Bujji Babu, Orthopaedic Surgeon and other team of Doctors. In all he spent Rs.1,20,000/- towards medical treatment and medicines and became partially permanently disabled and now his gait is hampered and he walk with a limp. He cannot walk briskly, run or squat or lift weights. The Doctor, who treated P.W.1 in Geetha Orthopaedic and Maternity Nursing Home at Jagtial, is examined as P.W.4, who corroborate the evidence of P.W.1 that the claimant was admitted as inpatient in Hospital on 22.11.2000 and discharged on 12.1.2001 and when he had pain in left leg, deformity X-ray was taken which shows 'V' nail with refracture left tibia for which operation first stage was performed on 23.11.2000. 'V' nail was extracted Ilizarov ring fixator pilled on 30.12.2000 and second stage bone grafting was done and discharged on 12.1.2001 with the advice to regular follow up. Ex.A5 – discharge summary and Ex.A7 bill for Rs.56,350/- were confronted through P.W.4. The further evidence of P.W.4 is that on 7.6.2001 ring

fixator was removed by conducting operation and he was assisted by Dr.Bujji Babu K., Orthopaedic Surgeon.

Therefore, the evidence of P.W.1 corroborated by the evidence of P.W.4 and supported by Exs.A5 and A7 goes to suggest that after discharge from Vivekananda Hospital also he was admitted in the Geetha Orthopaedic and Maternity Nursing Home at Jagtial on 22.11.2000 and discharged on 12.1.2001 which is clear from Ex.A5 discharge summary and he spent Rs.56,350/- which was charged by the Geetha Orthopaedic and Maternity Nursing Home at Jagtial. Further, the fixator was also removed on 7.6.2001 for which he incurred expenditure. Further, the amount under Ex.A8 medical bills comes to Rs.18,069/- for which the claimant is entitled to and this amount was not allowed by the Tribunal which is erroneous. Further, the evidence of P.W.1 is that he is unable to walk, sit, run and lift weights. P.W.4, the Doctor, also speak that P.W.1 may get on and off pain while climbing stairs and on squatting position and even brisk walk to his knowledge the disability is 20%. The claimant was taken pain killers on and off for pain. Though P.W.4 was cross-examined at length, he could not elicit any favourable material. The only suggestion is disability assessed by P.W.4 is less than 20% which means that the disability is admitted by respondents, but contest that it is less than 20%. There is no substance in the suggestion to P.W.4 that the injury sustained by him does not warrant operation, when medical evidence on record, Ex.A4 - discharge card and Ex.A5 - discharge summary

shows that P.W.1 underwent surgery in the Vivekananda Hospital as well as Geetha Orthopaedic and Maternity Nursing Home and injuries sustained by P.W.1 are further proved by Ex.A3 – certified copy of accident register.

With regard to age of P.W.1 absolutely there is no proof. In the claim petition as well as during evidence it is stated that he was 33 years old and his evidence is that he was doing business and earning Rs.6,000/- per month. To substantiate the business, besides testimony of P.W.1, there is the evidence of P.W.3, whose evidence is that P.W.1 is also a partner in their partnership firm viz., 'Himalaya Finance and Chits' situated at Jagtial, which was registered firm vide registration No.2864 of 1989 and it came into existence from 1.5.1989 and registered on 12.5.1989 with Registrar of Firms as per Ex.A11. According to the evidence of P.W.3 there are ten partners who contain a partnership agreement Ex.A12, dated 1.5.1989. All partners invested amounts and engaged in the business of financing to needy people on daily, weekly, monthly and yearly basis. P.W.1 was entrusted with duty of recovery and collection of amounts payable to the firm. P.W.1 used to travel extensively as their business was spread in many parts of Karimnagar District. He used to travel on his vehicle i.e., motor bike and all the expenses for fuel, incidental, miscellaneous were borne by the firm itself. As per Ex.A12 they used to share the profits and loss at 10% each and P.Ws.3 and 1 are at serial Nos. 3 and 4 in Ex.A12 agreement. Every partner used to earn Rs.6,000/- to Rs.10,000/- per

month and after accident, there was no one competent to take up the job of recovery and collection and eventually by the end of the year 2000, they closed the finance business.

It is also the corroborative evidence of P.Ws.1 and 3 that P.W.1 was bed ridden nearly a year from the date of the accident and the wife of P.W.1 used to attend him and P.W.1 was operated quite a number of times. To substantiate that he has got knowledge of treatment and hospitalization, he clearly deposed that himself and other partners used to visit the hospital to watch the treatment as well at his residence. The corroborative evidence of P.Ws.1 and 4 is that the claimant was limping while walking and he cannot climb stairs or squat or drive a vehicle and ever since the accident, he is at home. The only suggestion to P.W.3 is that they are not earning Rs.6,000/- to Rs.10,000/- per month and the claimant was not partner to Himalaya Finance and Chits situated at Jagtial. To substantiate that suggestion, no oral or documentary evidence was adduced.

Therefore, I am of the opinion that the evidence of P.Ws.1 and 2 corroborated and supported by the evidence of Exs.A11 and A12 well established that P.W.1 is a partner of Himalaya Finance and Chits situated at Jagtial which was registered with Registrar of Firms on 12.5.1989. They entered into agreement and there is a partnership deed between the partners and according to which, P.W.1 is at serial No.4 and P.W.3 is at serial No.3 of Ex.A12 and their share of profits and loss is 10% each. There is no rebuttal evidence to rebut the evidence of

P.Ws.1 and 2 and Exs.A11 and A12, hence I am of the considered view that P.W.1 was doing business and used to earn not less than Rs.6,000/- per month as a partner. With regard to age, the evidence of P.W.1 is he was 33 years by the date of the accident. In Ex.A12 – partnership agreement the age of P.W.1 is noted as 21 years as on 1.5.1989 and the accident was occurred on 25.9.1999. In Ex.A1 – charge-sheet age of the petitioner was noted as 31 years. In Ex.A2 – F.I.R. the age of the petitioner was noted as 31 years. In Ex.A4 – discharge card, the age of the petitioner was noted as 31 years. In Ex.A5 – discharge certificate the age of the petitioner was noted as 31 years. In the absence of any rebuttal evidence produced by respondents, I find that injured was 31 years by the date of accident.

The Doctor is the proper person to speak about the nature of injuries. The consistent evidence of P.W.1 corroborated with P.W.4 is that P.W.1 sustained fracture of both bones of left leg and thrice he underwent surgery. Skin grafting was done twice in the Geetha Orthopaedic and Maternity Nursing Home at Jagtial by incurring heavy expenditure. He was inpatient from 26.9.1999 to 8.10.1999 in Vivekananda Hospital and again from 22.11.2000 to 12.1.2001 in Geetha Orthopaedic and Maternity Nursing Home at Jagtial. He incurred expenditure as stated under Exs.A6 to A8 medical bills and medicines were purchased as per prescriptions under Ex.A9 for those amounts claimant is entitled towards treatment and medicines. It is

also the evidence of P.Ws.1 and 3 that he was completely bedridden for one year and according to P.W.3 they stopped the business.

The evidence of P.Ws.1 and 4 corroborated with Ex.A5 further established that the claimant was not able to walk, squat, run or lift weight and the disability was estimated at 20% which is partial and permanent. The claimant was 31 years as on the date of accident. The income was assessed at Rs.6,000/- per annum. The Tribunal did not consider the disability and also the actual expenditure incurred towards treatment under Exs.A6 to A9, but it allowed only Rs.30,000/- on all counts which is perverse and not supported by any law.

Taking into consideration the income of P.W.1 at Rs.6,000/- per month, the annual income comes to Rs.72,000/- and the claimant being single, after deducting 50% therefrom towards his maintenance, it works out to Rs.36,000/-. By applying the relevant multiplier to the age of the claimant basing on the decision in *Sarla Verma v. DTC*¹ i.e., '16', the normal compensation comes out to Rs.5,76,000/- and 20% of which comes to Rs.1,15,200/-, thus the claimant is entitled to **Rs.1,15,200/-** towards loss of earnings due to partial permanent disability, besides that the petitioner is also entitled to medical expenses of **Rs.85,304/-** (Rs.10,885/- (Ex.A6) + Rs.56,350/- (Ex.A7) + Rs.18,069/- (Ex.A8). The claimant is also entitled for **Rs.6,000/-** towards pain and suffering, **Rs.10,000/-** towards food and nourishment

¹ (2009) 6 SCC 121

and **Rs.1,000/-** towards conveyance charges. Thus, in total the claimant is entitled to an amount of **Rs.2,17,504/-**.

In *Adam Indur Muttemma and Ors. Vs. Rathod Reddia and Ors.*² this Court observed that the first division bench in *Pidigala Linga Reddy and Others Vs. Satla Srinivas*³ took a view that the Court can grant compensation exceeding the claim amount subject to payment of Court fee, if any, payable. Another Division bench of this Court in *New India Assurance Company Limited V. Chintnala*⁴ took exactly the opposite view holding that the Tribunal/Court is not empowered to award higher compensation than the compensation claimed by the claimants. The order of reference was made on 28.6.2002. Thereafter, this Court relied on the decision of the Apex Court in *Nagappa v. Gurudayal Singh and Others*⁵ wherein the Apex Court held that in appropriate case, wherefrom the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is it should be just compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. The same view was thereafter reiterated by the Apex Court in *Rajesh and others Vs. Rajbir Singh and Others*⁶.

² 2015 (4) ALD 585

³ 2001 (6) ALD 429 (DB)

⁴ 2002 (3) ALT 194 (DB)

⁵ (2003) 2 SCC 274

⁶ (2013) 9 SCC 54

In view of the law laid down in the aforementioned judgments, I am of the opinion that because of the erroneous conclusions, the Tribunal came to the conclusion that the claimant is entitled to Rs.30,000/- in lump sum, but, whereas, as per law and facts the claimant is entitled to the compensation of Rs.2,17,504/-.

By relying on the above decisions, I find the compensation amount of Rs.2,17,504/- is just compensation for which claimant is entitled.

Accordingly, the appeal is allowed and the Award and Decree dated 30.12.2005 in M.V.O.P. No.63 of 2003 passed by the Judge, Family Court, Secunderbad, is set aside and modified enhancing the compensation awarded by the Tribunal from Rs.30,000/- to Rs.2,17,504/- together with interest @ 7.5% per annum from the date of the petition till the date of realization with proportionate costs against respondents 1 and 2 jointly and severally. The respondents 1 and 2 are directed to deposit the said amount after adjusting the amount if any already deposited or paid within a period of one month from the date of receipt of a copy of the order. On such deposit, the claimant is permitted to withdraw the said amount.

The claimant is directed to pay deficit court fee on the amount awarded exceeding the claim amount within fifteen days.

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

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

November, 2017

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