

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.1837 of 2004

JUDGMENT:

The petitioner-claimant in O.P. No.202 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ongole (for short, 'the Tribunal'), is the present appellant. Dissatisfied with the award of Rs.2,00,000/-, dated 4.5.2004, for the injuries the petitioner-claimant sustained in a road accident, as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), preferred the present Appeal under Section 173 of the Act.

2. Heard Sri Nuthalapati Krishna Murthy, learned counsel for the appellant and Sri A.V.K.S. Prasad, learned Standing counsel for the 3rd respondent-Insurance Company, and perused the material available on record.

3. The Driver and the Owner of the lorry, who are the respondents 1 and 2, remained *ex parte* before the Tribunal. The 3rd respondent-Insurance Company alone contested the claim. So far as the 2nd respondent is concerned, Appeal was dismissed for default on 14.7.2016, but the said dismissal is of no consequence in view of the decision of the Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹. So far as the 1st respondent is concerned, notice served and none appears.

¹ 2001(1) ALT 495 (D.B.)

4. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

5. The Tribunal, having framed three issues and examined P.Ws.1 to 4 on behalf of the petitioner-claimant, amongst whom P.Ws.3 and 4 are Medical officers, who are examined on commission, and marked Exs.A1 to A20. On behalf of the 3rd respondent, no witnesses were examined, but copy of Ex.B1-Insurance Policy was marked.

6. There is no dispute in regard to taking place of the accident and the petitioner-claimant sustaining injuries, and even loosing his capacity to perform sexual act, besides some sort of serious inconvenience, which would be discussed a little later.

7. The Tribunal having taken into account the medical bills awarded a sum of Rs.1,00,000/- for treatment, pain and suffering, medical expenses, etc., and another sum of Rs.1,00,000/- for becoming impotent on account of the accident. Admittedly the petitioner-claimant was 35 years as on the date of the accident and the grievance of the petitioner is that the Tribunal did not properly appreciate the evidence and did not award any amounts in accordance with well settled legal principles. It is not in dispute that the petitioner-claimant sustained three grievous injuries (1) fracture of pelvis bone (2) dislocation of left elbow, and (3) urethral rupture, besides multiple abrasions. There is ample evidence to prove the injuries sustained by the petitioner-claimant. Initially, he was treated in Vijaya Raghava Rao Hospital, Ongole, for a period of 25 days as

In-patient and on advise the petitioner-claimant was shifted to Nizam Institute of Medical Sciences (NIMS), Hyderabad, where he had undergone treatment for a period of two months. There was surgical intervention and Urethral Plastic Surgery was done. Again, he was treated by Dr. K.S.N. Chari at Guntur in Sai Nursing Home. Both the Doctors, examined as P.Ws.3 and 4, deposed that P.W.1 would not get erection and due to the same he was declared as impotent and thus he attained permanent disability. He was treated as In-patient in the first instance for a period of 25 days at Ongole and two months at NIMS Hospital, Hyderabad, and again from 22.8.1997 to 26.8.1997 at Sai Nursing Home, Guntur, since he sustained fracture of pelvis and urethral rupture and P.W.1 has to pass urine through minor procedure, and became permanently incapable for sexual life as per Ex.A10, that accounts for permanent disability.

8. Before adverting to whether the amounts awarded by the Tribunal are in tune with just and adequate compensation, it is apt to refer to the rulings in **G. Ravindranath @ R. Chowdary v. E. Srinivas and another²**, **Divisional Manager, Oriental Insurance Co. Ltd. v. Rajesh and others³** and **R. Venkata Ramana and another v. United India Insurance Co. Ltd. and others⁴**.

9. In **Ravindranath @ R. Chowdary** (2 supra) wherein it has been held by the Hon'ble Supreme Court in paragraph Nos.13 and 21 to 23, thus:

² (2013) 12 SCC 455

³ 2017 ACJ 253

⁴ 2014 (1) ALD 10 (SC)

“13. *In Ibrahim v. Raju* (2011) 10 SCC 634, this Court took cognizance of the plight of the victim of road accidents and observed: (SCC pp. 636-37, para 8)

“8.The sufferings of the dependants of those who are killed in motor accidents and the survivors who are disabled are manifold. Sometime these can be measured in terms of money but most of the times it is not possible to do so. If an individual is disabled as a result of road accident, the cost of treatment, care and rehabilitation is likely to be very high. A very large number of people involved in motor accidents are pedestrians, children and women and, on account of sheer ignorance, poverty and other disabilities, majority of them are unable to engage competent lawyers for putting their cause before the Tribunals and the courts. The insurance companies, with whom the vehicles involved in the accidents are insured always have the advantage of assistance of legally trained mind (law officers and panel lawyers). They contest the claim petitions by raising all possible technical objections for ensuring that their clients are either completely absolved or their liability is minimised and in the process, adjudication of the claims filed by the victims and/or their legal representatives is delayed for years together. At times, the delay in disposal of the claim cases and litigation expenses make the award of compensation meaningless for survivors of the accidents and/or families of the victims.”

21. From the testimony of three witnesses, it is established that as a result of accident the Appellant had suffered grievous injuries in the pelvic region and he has become impotent. It is also established that he has already undergone multiple surgeries and will have to take treatment in institutes like NIMS for at least 10 years.

22. Unfortunately, the Motor Accident Claims Tribunal, Raichur did not give due weightage to the evidence produced by the Appellant and awarded meager compensation and that too by overlooking the documentary evidence produced by the Appellant regarding the expenses incurred by him at Bhandari Hospital, Raichur and NIMS at Hyderabad. The High Court also failed to properly analyse and evaluate the evidence produced by the Appellant and did not adequately enhance the compensation determined by the Tribunal.

23. In our view, the Appellant is entitled to Rs.2,20,000/- towards the expenses incurred in the treatment including hospitalization charges, mess and lodging charges, transportation, etc. For future medical expenses including hospitalization, medicines, attendant charges, etc., the Appellant is entitled to Rs.6 lakhs. For pain, suffering and trauma, the Appellant is entitled to a sum of Rs.3 lakhs. For loss of amenities and prospects of marriage, the Appellant is entitled to Rs.4 lakhs. For loss of expectation of life and loss of future earning, the Appellant is entitled to a sum of Rs.5 lakhs.”

10. In **Divisional Manager, Oriental Insurance Co. Ltd. v. Rajesh and others** (3 supra), a sum of Rs.1,00,000/- was awarded towards 'loss of marriage prospects'.

11. In **R. Venkata Ramana** (4 supra), the observations of the Hon'ble Supreme Court in paragraph-12, since apt to note, extracted hereunder:

"12. From the order of the tribunal, we find that the Appellants had in fact proved that they had spent Rs.3,49,128/- towards medical expenses for treating their son. They had to purchase certain instruments worth Rs.58,642/- for making life of their son comfortable and Rs.31,000/- had been spent towards nursing and Rs.1,37,000/- had to be spent for Physiotherapist. Looking at the fact that Rajanala Ravi Krishna will have to remain dependant for his whole life on someone and looking at the observations made by the Tribunal, which have been reproduced hereinabove, in our opinion, his life is very miserable and there would be substantial financial burden on the Appellants for the entire life of their injured son. At times it is not possible to award compensation strictly in accordance with the law laid down as in a particular case it may not be just also. We are hesitant to say that it is a reality of life that at times life of an injured or sick person becomes more miserable for the person and for the family members than the death. Here is one such case where the Appellants, even during their retired life will have to take care of their son like a child especially when they would have expected the son to take their care."

12. On the anvil of legal principles laid down in the aforesaid rulings, the request of the appellant requires examination. According to P.W.1 he was already blessed with two children. Therefore, the amount of Rs.1,00,000/- granted by the Tribunal is maintained towards 'treatment', in view of the bunch of medical bills, marked as Ex.A20. So far as another amount of Rs.1,00,000/- granted by the Tribunal is concerned, the Tribunal has not gone into details. There have been three fractures as referred to in the above, but, fracture of pelvis and urethral rupture, in fact, were of serious nature, due to

which not only he lost the enjoyment of sexual life but also on account of urethral rupture, P.W.1 has to pass urine through minor procedure and, therefore, for the three grievous injuries a sum of Rs.75,000/- is granted towards injuries as well as pain and suffering. The amount of Rs.1,00,000/- granted by the Tribunal is maintained towards impotency. In fact, the petitioner-claimant was on leave from 6.3.1997 to 26.09.1997. Thus, he was on leave for a period of six months and twenty days. He has filed monthly salary certificate drawing a salary of Rs.11,739/- and when computed it comes to Rs.70,734/- for six months and Rs.7,826/- for 20 days, thus totalling to Rs.78,560/-, which he had to avail on account of accident and loose his leave account. Towards 'extra nourishment' a sum of Rs.15,000/- is granted; towards 'attendant charges' a sum of Rs.9,000/- is granted at the rate of Rs.1,500/- per month for four months; towards 'transportation charges' a sum of Rs.10,000/- is granted. Since the permanent disability sustained by the petitioner-claimant cannot be measured in terms of loss of earning capacity, but he has to bear with loss of enjoyment of sexual life and urethral rupture causing inconvenience in passing urine which he has to bear throughout life, a sum of Rs.1,00,000/- is granted towards 'permanent disability'. Thus, in all, the petitioner-appellant is entitled to Rs.4,87,560/-, which was rounded off to Rs.4,88,000/-.

13. In the result, the Appeal is partly allowed enhancing from Rs.2,00,000/- (Rupees Two lakhs only) to Rs.4,88,000/- (Rupees Four lakhs and eighty eight thousand only). The rate of

interest awarded at 12% p.a. on Rs.2,00,000/- is maintained and on the enhanced amount of Rs.2,88,000/- interest at the rate of 7.5% per annum is awarded keeping in view the decision in **Rajesh v. Rajbir**. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA

Dt. 20.10.2017
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