

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.1614 of 2010

JUDGMENT:

The appellant, aggrieved by the Order and Decree, dated 18.06.2010 in OP No. 1008 of 2008, on the file of the Motor Accident Claims Tribunal-cum-XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad, prefers this appeal, besides other grounds, on the ground that the Tribunal ought to have appreciated the evidence of PW-2 and the documentary evidence and ought to have granted the full of amount of Rs.5,00,000/- by applying relevant multiplier.

2. The brief facts of the case are that on 29.03.2008 at about 15.15 hours, near Flyover at Erragadda, Hyderabad the driver of the Car bearing No. AP23M.1188 drove the same in a rash and negligent manner and dashed against the petitioner/ appellant, due to which he sustained multiple injuries, and admitted in Mamatha Hospital, KPHB Main road, Kukatpally, Hyderabad and was treated as in-patient from 29.03.2008 to 05.04.2008 and due to the accident he became permanently disabled.

The 2nd Respondent-Insurance Company filed its counter resisting the said claim and stating that the accident was due to the contributory negligence of the petitioner, and the interest claimed is excessive.

4. The Tribunal having considered both the pleadings and hearing both sides settled the following issues for trial:-

(1) Whether the accident resulting in injuries to the petitioner occurred owing to the rash and negligent driving on the part of the driver of the Car, bearing Registration No.AP-23M-1188?

(2) *Whether the petitioner is entitled for compensation and if so, to what amount and from whom?*

(3) *To what relief?*

5. In support of the claim, the claimant examined PWs.1 to 3, and marked Exs.A-1 to A-9, and on behalf of respondents, no witnesses were examined, but Ex.B.1 was marked.

6. The claimant, who is the appellant herein, is not disputing the findings with regard to rash and negligent driving or the other things, but only dissatisfied with the quantum of the compensation awarded, stating that it is meagre. The consistent evidence of PW-1 is that the accident was occurred due to the rash and negligent driving of the offending Car and in the said accident he sustained multiple grievous injuries for which he was treated as in patient from 29.03.2008 to 05.04.2008. For the fracture of left shaft humerus ORIF with DCP planting under General Anesthesia was done, and implant removed and reunion surgery with locking plate was done on 2.4.2008. PW-1 further deposed that he sustained injuries over face and left eye, conversions vomiting, and bleeding from his nose was also present at the time of his admission, and left side head was operated. He is not able to lift weight with left hand, as the same is not working and he is suffering from permanent disability to his left hand and thereby lost his total earning capacity. As per Ex.A-6, the report of CT Scan Brain-plain, evidence of multiple fractures, involving anterior and lateral wall of left maxillary sinus left zygoma and left greater wing of sphenoid is noted; and evidence of soft tissue density lesion with hyperdense areas of attenuation values of blood is noted in left sphenoid, ethmoid and maxillary sinuses, suggestive of *haemo-sinus*.

7. PW-2 is the doctor, who treated PW-1 and he is the proper person to speak about the nature of injuries and their gravity. PW-2 supported the evidence of PW-1 in all aspects stating that on 29.03.2008 PW-1 was admitted in the hospital with multiple injuries, and he noticed fracture of left humerus, left zygoma, laceration over left eye and head injury. He was operated for fracture humerus, fixed with compression plating under General Anesthesia, and the eye laceration was sutured. PW-2 also stated that the plate fixed was bent, and therefore PW-1 was re-operated on 02.04.2008 by way of re-planting and finally discharged on 05.04.2008. PW-2 confirmed about the issuance of Ex.A-4 the wound certificate, Ex.A-5 discharge summary and Ex.A-6 CT Scan report, and that except the head injury, the other injuries are grievous in nature, but there is no disability to do normal work, as was done before the accident. PW-2 also deposed that after discharge also the petitioner came to their hospital for follow up treatment, but he cannot remember the dates. PW-3 is another Doctor and the Superintendent of Mamatha Hospital, Kukatpally in which the petitioner was treated. He spoke about the expenditure that was incurred by the petitioner for his treatment and for medicines etc.

8. The evidence of PWs.1 to 3, coupled with Exs.A-1 to A-8 establishes that the accident was due to the rash and negligent driving of the driver of the offending car only and absolutely there is no rebuttal evidence produced by the respondents. The contesting respondent, having taken a plea of contributory negligence on the part of the injured/petitioner, did not choose to enter into witness box to prove the same. In such circumstances, the finding of the Tribunal that

the accident was only due to the rash and negligent driving of the driver of the offending car cannot be questioned, which appears to be correct.

9. The evidence of PW-1 with regard to the injuries sustained by him and their gravity is corroborated by the evidence of PWs-2 and 3, who are the doctors and treated the claimant, and further corroborated by Exs.A.4 to 8, including the expenditure incurred by the petitioner for his treatment.

10. The Tribunal, having considered the oral evidence of the Doctors i.e., PWs.2 and 3 and the ocular evidence of PW-1, supported by Ex.A4 Medical Certificate, Ex.A-5 discharge summary, Ex.A.6 CT Scan brain report, Ex.A7 discharge bill issued by the hospital for a sum of Rs.1,09,245/- and Ex.A8 bunch of medical bills, 28 in number, for a total sum of Rs.15,787/-, came to the conclusion that in the accident, PW-1 sustained the above injuries and awarded a sum of Rs.15,000/- towards pain and suffering, apart from other heads. Out of the injuries sustained by the petitioner/ appellant, three injuries were proved as grievous in nature. Hence, keeping in view all the above, and the treatment undergone for a period of eight days, the Tribunal also awarded a sum of Rs.1,25,032/- towards medical expenditure; Rs.30,000/- towards loss of past and future prospects, Rs.5,000/- towards transport charges, Rs.20,000/- towards disability and Rs.9000/- towards attendant charges. Thus, in all the Tribunal awarded a sum of Rs.2,04,032/- as compensation.

11. I have heard the learned counsel appearing for both the parties and considered the entire material on record, including the medical

evidence and the award passed by the Tribunal. From the above discussion, it is clear that for the three grievous injuries, though there is no permanent disability, the Tribunal awarded a meagre amount of Rs.15,000/-, which is not normal. Therefore, keeping in view the gravity of the injuries sustained and the period of treatment undergone by the appellant, I am of the opinion that an amount of Rs.30,000/- for each injury is the reasonable compensation to be awarded to the claimant. Thus, the claimant is entitled to Rs.90,000/- as against the amount of Rs.15,000/- awarded by the Tribunal, for the three grievous injuries sustained by him towards pain and suffering. Apart from that, the Tribunal awarded a compensation of Rs.30,000/- towards loss of past and future prospects, keeping in view the salary certificate produced under Ex.A-9. As per Ex.A-9, the monthly salary of the petitioner/ appellant was Rs.13,000/- per month.

12. According to the evidence of PW-1, he could not attend to any work for a period of three months, and now he is unable to lift weights with his left hand as the same is not working properly and thereby he sustained permanent disability. Though the pleaded disability is not proved, I feel that the amount of Rs.30,000/- awarded under this head is meagre, and needs to be enhanced. Accordingly, the same is enhanced by another Rs.25,000/- in addition to the amount of Rs.30,000/- awarded by the Tribunal to meet the ends of justice. The other amounts awarded by the Tribunal under other heads, such as medical expenditure, transport charges, disability and attendant charges, are appears to be reasonable and hence needs no interference in this appeal.

13. Accordingly, the petitioner is entitled for compensation under different heads, as under:

(1). Pain and suffering	-	Rs. 90,000/ -
(2). Medical Expenditure	-	Rs. 1,25,032/ -
(3). Compensation for loss of Past & future prospects		Rs. 55,000/ -
(4) Transport Charges		Rs. 5,000/ -
(5) Disability		Rs. 20,000/ -
(6) Attendant Charges		<u>Rs. 9,000/ -</u>
Total amount ...		<u>Rs.3,04,032/-</u>

14. In the result, the appeal is partly allowed, and the order and decree under appeal passed by the Tribunal shall stand set aside and modified to the extent indicated above. The respondents are directed to deposit the awarded compensation jointly and severally, along with the accrued interest at the rate of 7.5% per annum, from the date of petition i.e., 05.05.2008 till the date of payment, and costs within one month from the date of receipt of a copy of this order.

On such deposit the appellant/ petitioner is permitted to withdraw the same.

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

Consequently, the Miscellaneous Petitions pending, if any, shall stand closed accordingly.

Dt:17.11.2017
Kv

N. BALAYOGI, J

THE HON'BLE SRI JUSTICE N.BALAYOGI



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JUDGMENT

Dt. 17.11.2017

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