

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.91 of 2008 and
Cross Objections (SR) No.1878 of 2008

JUDGMENT :

The Insurance Company/Respondent No.1 in O.P. aggrieved by the judgment and award dated 31.5.2006 in O.P.No.300 of 2005 on the file of the Motor Vehicle Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar, preferred M.A. C.M.A. No.91 of 2008, whereas the claimant in O.P. preferred cross objections (SR) No.1878 of 2008.

M.A. C.M.A. No.91 of 2008 :

2. The contention of the appellant is that the Tribunal below ought to have noted amputation of leg up to knee level constitutes 50% disability as per Workmen Compensation Act, which will come within the purview of permanent disability, but not partial and the Tribunal below ought not to have relied on Ex.A9 – Disability Certificate by giving much credence.

3. It is further contended that even though there is no evidence of P.Ws.2 and 3, the Tribunal erroneously awarded Rs.50,000/- towards future medical expenses and the Tribunal ought not to have granted Rs.5,000/- towards loss of pleasure separately when Rs.50,000/- has been granted towards loss of amenities of life.

Cross Objections (SR) No.1878 of 2008 :

4. The claimant/cross-objector contended that the Tribunal failed to see that the notional income of Rs.15,000/- can be taken only when the application under Section 163-A of the Motor Vehicles Act is filed, whereas the claimant filed the petition both under Sections 163-A and 166 of Motor Vehicles Act and negligence is proved. It is further contended that the Tribunal failed to see that the disability is different from the loss of earning capacity and ought to have awarded amount towards future medical expenses also in liberal manner.

5. The claim of the claimant in brief is that on 19.5.2004 while the claimant was proceeding along with deceased Baddam Rajender Reddy on the motor cycle bearing No.AP 15 Q 3346, at about 9.30 PM when they reached Mamindlu in the outskirts of Arepet Village, the deceased Rajender Reddy rode the motor cycle in a rash and negligent manner at high speed, lost control and dashed to road side stone pole. The rider died on the spot with the head injury and petitioner sustained fracture injuries and immediately he was shifted to the Hospital at Hyderabad. He was admitted on 20.5.2004 and took treatment in Sai Vani Hospital, Hyderabad as in patient. He was diagnosed with vascular injury, after ruling out burney injury to thigh. Knee and legs colour Doppler sturdy of left lower limb was done and no flow was noted distal to distal femoral artery. Dr.P.C. Guptha under image intensifier in OT done arterial angiogram to the left lower limb. Vascular exploration and repair was planned. When

incision was made over left leg for fasciotomy proceed, the muscles of the leg were found non-viable, further procedure was deferred and A/K amputation was considered and it was done on 20.5.2004.

6. Subsequently, marginal necrosis of stump occurred with gaping of wound which was sutured secondarily. On 5.6.2004, the necrosed skin over anterior aspect of left thigh was excised and was allowed to granulate, blood transfusion was given to build up the haemoglobin percentage on 23.6.2004. Split skin grafting was done for raw area over left thigh and left forearm. Graft had taken by 95% and discharged on 30.6.2004 with advice to come for treatment regularly and he incurred an amount of Rs.1,50,000/- towards medical treatment. The petitioner was 21 years old, hale and healthy and he was fisherman by caste and profession. He used to not only fishing in the nearby rivers and tanks, but also used to purchase and resale them in the markets of Metpally and other places and he used to earn Rs.8,000/- per month and contribute for the welfare of his family. Because of the amputation of leg, the petitioner's life has become so miserable in every core of his life. He needs attendant through out the life. He not only physically disabled, but also subjected to mental agony, pain, suffering, inconvenience and discomfort during the period of treatment which made him almost a depressed man. The physical set back has resulted total loss of earnings and future earning capacities. He was proposing to set up an export business of packed fish food. But, the accident has completely thrown him out of the

business. Thus, future prospects of his business carrier have been totally shattered. His chances of marriage has become bleak. He lost future enjoyment of life.

7. If an expected future life of the petitioner is assumed to be sixty years, he has to change his leg at least fifteen times. In such circumstances, he has to incur an additional amount for future medical expenses for having an artificial leg.

8. Now the point that arose for determination is findings and conclusion in the Award of the Tribunal dated 31.5.2006 in O.P. No.300 of 2005 are tenable or suffer from legal infirmities warranting interference.

9. The contention of the learned counsel for the insurance company is that the amputation of leg up to knee level constitutes 50% disability under the Workmen's Compensation Act and comes under the purview of permanent disability, but not partial one and as such Ex.A9 cannot be relied.

10. On the other hand, the claimant in the cross-objections contended that the Tribunal failed to see that the notional income of Rs.15,000/- can be taken only when the application under Section 163-A of the Motor Vehicles Act is filed, whereas the claimant filed the petition both under Sections 163-A and 166 of Motor Vehicles Act and negligence is proved. Further, the Tribunal failed to see that the disability is different from the loss of earning capacity.

11. Absolutely there is no dispute from the pleadings in the grounds of appeal filed by the insurance company and also the cross-objections filed by the claimant that the accident is occurred due to rash and negligent driving of the rider of the motor cycle bearing No.AP 15 Q 3346 who is the deceased Rajender Reddy. The only dispute is with regard to disability, quantum of compensation and loss of earnings.

12. P.W.1 is the claimant himself and besides him, he also examined P.Ws.2 to 4, the Doctors who treated him in the respective Hospitals.

13. P.W.2 is the Orthopaedic Surgeon and Member of District Medical Board which issued Ex.A9 - disability certificate on 6.8.2005 certifying disability at 80%. P.W.3 is the Proprietor of Radsun Health Care institution where P.W.1 admitted on 13.6.2005 for preparation of P.P. socket for the amputated leg. P.W.4 is M.S. Ortho in Sai Vani Hospital who attended on P.W.1 in the said Hospital.

14. In support of petitioner's contention, P.Ws.1 to 4 were examined and Exs.A1 to A13 were got marked. On behalf of respondent, none were examined, but Ex.B1 – Policy was got marked.

15. The material on record goes to suggest that originally the claim was filed against the insurance company only and since the insurance company has taken the objection in the counter stating that

petition is bad for non-impleading the deceased Rajender Reddy who is the owner of the offending motor cycle, respondents 2 and 3 were brought on record as per orders in I.A. No.1827 of 2005, dated 6.10.2005.

16. The evidence of P.W.1 is that on the date of accident he along with B.Rajender Reddy went to Metpally on motorcycle to meet their friend and while returning back on the same motorcycle to Arepet village and when they reached the outskirts of Arepet village, the rider of the motorcycle deceased Rajender Reddy rode the motor cycle in a rash and negligent manner and dashed against road side stone poll, as a result, Rajender Reddy sustained head injury and died on the spot and he sustained fracture injury to his right hand and injury to the left leg. Ex.A1 is the certified copy of F.I.R. in crime No.70 of 2004 and Ex.A2 is the certified copy of the charge-sheet.

17. A perusal of Ex.A1 goes to suggest that B.Chinna Raji Reddy made the complaint under Ex.A1 alleging that B.Rajender Reddy who was studying degree at Hyderabad came to Arepet for holidays. On the previous day, Rajender Reddy to meet his friends at Metpally proceeded on the motor cycle bearing No.AP 13 Q 3346. At about 10 PM, he received information that his brother's son Rajender Reddy along with another admitted in the Hospital and he came to know that at about 9.30 PM in the outskirts of Arepet the deceased Rajender Reddy hit the stone pole on the side of the road and involved in the accident. The Investigating Officer, after thorough

investigation, filed final report stating that on 19.5.2004 the deceased Rajender Reddy went to Metpally on his Bajaj Pulsar motor cycle bearing No.AP 13 Q 3346 to meet his friends. On the same day at 21 hours the deceased along with P.W.1 returned back to Arepet village and at about 21.30 hours when they reached mamindlu near Arepet outskirts, the deceased drove his Bajaj Pulsar motorcycle in a rash and negligent manner, lost control and dashed to a stone pole, due to which he received head injury and died on the spot and P.W.1 sustained injuries. Accordingly, he filed the final report.

18. In the facts and circumstances discussed above, I am of the considered view that the Tribunal, having elaborate discussion of the oral and documentary evidence, came to the right conclusion that the accident was due to rash and negligence of the rider of the Bajaj Pulsar motor cycle bearing No.AP 13 Q 3346. The evidence of P.W.1 is that he sustained fracture injuries to right hand and injury to left leg and he was shifted to Sai Vani hospital, Hyderabad where he took treatment for forty days and left leg was amputated above knee level and the surgery was conducted for the left hand and steel rods were inserted and discharged him with an advice of bed rest for one year. He incurred an expenditure of Rs.1,50,000/- for his treatment.

19. The evidence of P.W.4 – Dr.B.Prabhudeer, M.S. Ortho. is that P.W.1 admitted in Sai Vani Hospital in emergency condition on 20.5.2004 at 4.00 AM. At the time of admission, they found diagnosed left popliteal vessels transaction and with $\frac{3}{4}$ circumference

lacerated wound left forearm, swelling of left thigh knee leg with deeply contused skin. P.W.4 attended on P.W.1 at the time of admission and he found that there was no blood circulation in the left leg. Dr.P.C.Guptha, Vascular Surgeon, was called for evolution of vascular injury and angiogram was done on the same day and no blood circulation was noted below the knee. An above knee amputation was performed on 20.5.2004 as the leg was non-viable. The left fore arm wound was debrided and sutured on the same day. On 23.6.2004, skin grafting of the left fore arm wound was done. The patient was discharged on 30.6.2004 and after discharge, the patient was on regular follow up treatment. Ex.A3 is 'discharge summary' issued by Sai Vani Hospital which is supported by the evidence of P.Ws.1 and 4. According to Ex.A3 – discharge summary, on clinical examination, very tight compartment of left leg with absence posterior tibial and dorsalis pedis pulse is noticed. Active toe movements were absent. Left lower limb was cold from knee distally with decreased sensation from ankle. Swelling of left thigh was noted with deeply contused skin over antero medial aspect of left thigh 3/4th of circumference lacerated wound over middle of left forearm with avulsion of skin of volar aspect with doubtful viability. Left active finger movements and radial pulse were felt.

20. It is pertinent to note that immediately on admission vascular injury was suspected after ruling out burn injury to thigh. Knee and leg colour Doppler study of left lower limb was done and

no flow was noted distal to distal femoral artery. Dr. P.C. Gupta, Vascular Surgeon, has seen the case and a left lower limb arterial angiogram was done under image intensifier in O.T. No flow was noted beyond the distal femoral. Vascular exploration and repair was planned. When incision was made over left leg for fasciotomy proceed, the muscles of the leg were found nonviable, further procedure was deferred and A/K amputation was done on 20.5.2004. Subsequently, marginal necrosis of stump occurred with gaping of wound which was sutured secondarily.

21. On 5.6.2004 the necrosed skin over anterior aspect of left thigh was excised and was allowed to granulate, blood transfusion was given to build up the haemoglobin percentage on 23.6.2004. Split skin grafting was done for raw area. Graft had taken by 95% and advised review after one month while discharge.

22. The discussions made above from the evidence of P.W.1 supported by Ex.A3 – discharge summary well established that P.W.1 admitted in the Sai Vani Hospital on 20.5.2004. A/K amputation was done on 20.5.2004. On 5.6.2004 the necrosed skin over anterior aspect of left thigh was excised and was allowed to granulate, blood transfusion was given to build up the haemoglobin percentage on 23.6.2004. Split skin grafting was also done and discharged on 30.6.2004. Further, there is evidence of P.W.3 the proprietor of Radsun Health Care institution to establish P.W.1 joined in their institute with knee amputation on 13.6.2005 and discharged on

22.6.2005. During the said period they have taken measurements for costing, prepared P.P. socket and above knee prosthesis, then they have given gait training for 10 days and discharged P.W.1. They have charged Rs.1,13,000/- towards the above knee prosthesis, training and room rent charges. The evidence of P.W.3 further established that for every two years, the approximate cost of socket and foot management and maintenance charges will be Rs.6,500/-. Ex.A10 reveals all the above facts about admission of P.W.1 in Radsun Health Care on 13.6.2005 and discharge on 22.6.2005 and meanwhile preparing of P.P. socket and above knee prosthesis and giving gait training for 10 days, for which they charged Rs.1,13,000/-. Though P.W.3 was cross-examined at length, they could not able to elicit any favourable material. During cross-examination, P.W.3 admits that as per receipt book, Rs.10,000/- was due and he paid Rs.1,03,000/-. The only suggestion is Ex.A10 was issued showing excess amount to help P.W.1. Except that there is nothing to rebut the evidence of P.Ws.1 and 3 about his above knee prosthesis and gait training for 10 days at Radsun Health Care.

23. P.W.2 is the Orthopaedic Surgeon and Member of District Medical Board, Karimngar. His evidence supported by Ex.A9 - disability certificate goes to suggest that on 6.8.2005 the team of Doctors examined P.W.1 and they found amputation above knee amputation on left side and assessed the disability at 80% permanent

and partial. The only suggestion given to P.W.2 is that the disability stated is exaggerated and Ex.A9 is issued only to help the petitioner.

24. The facts discussed above and the evidence of P.Ws.1 to 3 corroborated and supported by Exs.A9 and A10 goes to suggest that the team of Doctors of District Medical Board examined P.W.1 on 6.8.2005 and issued Ex.A9 certifying the disability at 80% permanent and partial. Therefore, the contention of the appellant insurance company is that the amputation of leg will come under the purview of permanent disability, but not partial one and Ex.A9 cannot be relied upon has no legs to stand in view of clear and consistent evidence of P.Ws.1 to 3 and Exs.A9 and A10.

25. The evidence of P.W.1 corroborated with the evidence of P.W.3 and supported by Ex.A10 goes to suggest that P.W.1 paid Rs.1,05,000/- towards cost of the left above knee prosthesis and for gait training programme for 10 days, paid at the rate of Rs.500/- per day, besides that paid room rent for 10 days at the rate of Rs.300/- per day, total costing Rs.1,13,000/-.

26. The evidence of P.W.1 is that he incurred Rs.1,50,000/- towards his treatment and undergoing follow up treatment. Besides that he also purchased artificial leg by expending Rs.1,15,000/-. It is further stated in Ex.A10 and deposed by P.W.3 that for every two years, P.W.1 has to change each foot, ankle bumper and spring in knee joint and approximate cost of which is Rs.6,500/- for which the petitioner is entitled to. Artificial leg also has to be changed.

27. In support of his contention, P.W.1 filed Ex.A4 bills statement and receipts showing that the Sai Vani Hospital issued a bill for Rs.61,151/- on 30.6.2004. The Doctor's receipt dated 30.6.2004 for Rs.47,350/-; medical bills from Nithya Sai Medical Hall, Metpally dated 2.7.2004 for Rs.4,540; dated 8.7.2004 for Rs.780/- and dated 10.9.2004 for Rs.830/-; medical bills from Sai Vani Medicals, Hyderabad, dated 1.7.2004 for Rs.194.05 and dated 17.9.2004 for Rs.132.75 and in total Rs.1,14,977.80 for this also there is no rebuttal evidence. The discharge summary – Ex.A3, final bill statement under Ex.A4, Doctor receipt under Ex.A5 confronted to P.W.4. Ex.A10 for Rs.1,13,000/- is also confronted to P.W.3. In the absence of any rebuttal evidence, the petitioner is entitled for the same towards medical bills (Rs.1,14,977.80 + Rs.1,13,000.00).

28. Further, the evidence of P.W.1 is that he incurred Rs.20,000/- towards transportation and he has been visiting the hospital for follow up treatment. He got marked Ex.A11 showing the transport charges at Rs.9,300/-, but the tribunal allowed only the ambulance charges of Rs.1,500/- and another Rs.1,500/- paid to Metpally Tax Union on 30.6.2004 simply on the ground that the petitioner could only produce receipts of Metpally Taxi Union and one receipt issued by Nithya Sai Maternity Hospital, but he has not examined any one of them to prove. When the evidence of P.W.1 is convincing, reliable, trustworthy and supported by valid receipts and particularly in the absence of any rebuttal evidence, rejection of the

receipts by the Tribunal is illegal and the petitioner is entitled for the said amount of Rs.9,300/- covered by Ex.A11 bills and this has to be modified.

29. The consistent evidence of P.W.1 is that he was 21 years old by the date of accident and as a fisherman he used to earn Rs.8,000/- per month. With regard to the age proof, P.W.1 did not file any document.

30. Though respondent disputed the age of the petitioner contending that claimant has to prove the age of the injured, he did not adduce any oral or documentary evidence. Absolutely there is no rebuttal evidence to the evidence of P.W.1. In the claim petition the age of the petitioner is shown as 21 years. In the charge-sheet under Ex.A2 the age of the petitioner is shown as 22 years. The disability certificate – Ex.A9 as well as the medical records shows the age of the deceased as 21 years. In the absence of any rebuttal evidence, I find that the petitioner's age is 21 years on the date of the accident and since there is amputation of left leg of the petitioner and the disability is permanent and partial as per evidence of P.W.2 and Ex.A9, permanent and partial disability is assessed at 80%. As per *Sarla Verma v. DTC*¹ taking into consideration the age of the petitioner as 21 years, the relevant multiplier applicable is '18', but where as the Tribunal considered the relevant multiplier as '17' thinking that the claim petition is filed under Section 163-A of the Motor Vehicles Act.

¹ (2009) 6 SCC 121

A perusal of the record goes to suggest that the petitioner filed the claim petition under Section 166 (1)(A) of the Motor Vehicles Act. Therefore, the Tribunal erred in considering the multiplier at '17', though relevant multiplier as per *Sarla Verma's Case* is '18'.

31. With regard to the income of the deceased, the evidence of P.W.1 is that he was earning Rs.8,000/- per month as a fisherman by selling fish and also hunting fish. The fisherman cannot be expected to possess income certificate or any licence. The Tribunal under the erroneous view find that there is not even a piece of paper produced before the Tribunal to show at least he was doing such business. When a man is belong to fisherman, certainly it can be presumed that he is doing his caste profession. The Court should not expect any proof of his caste profession.

32. Further, the Court herein erred in considering annual income at Rs.15,000/- per annum thinking the application is filed under Section 163-A of the Motor Vehicles Act. As already discussed above, this application is filed under Section 166 of the Motor Vehicle Act. Even a labourer coolie nowadays getting Rs.3,000/- to Rs.4,000/- per month. Even a house wife's income as per settled law must be not less than Rs.3,000/- per month. Basing on the settled principles of law, I am of the considered view that the income of the petitioner shall be assessed at Rs.3,000/- per month and Rs.36,000/- per annum.

33. Accordingly, having considered the age of the petitioner which is 21 years and living by doing fishing business, his minimum monthly income can be assessed at Rs.3,000/- per month. Keeping in view the petitioner is 21 years and living by fishing and hunting the fish and selling and his left leg was amputated up to knee level and the disability is 80%, his income is assessed at Rs.3,000/- per annum. He incurred heavy medical expenses of Rs.2,27,978/- (1,13,000 + 1,14,977.80). He was in the hospital for a period from 20.5.2004 to 30.6.2004 and also from 13.6.2004 to 22.6.2004. While discharge he was advised for follow up treatment and due to amputation of leg above knee level, petitioner cannot attend the fisherman business as usual. As per the evidence of P.W.3, he cannot climb trees, cannot swim and run fastly. P.W.1 also cannot get into ponds or tanks. So, the disability was rightly assessed by P.W.2 under Ex.A9 as 80%.

34. On consideration of the facts and circumstances of this case and the medical evidence, it is appropriate to award the following compensation.

35. Having estimated the monthly income of the deceased at Rs.3,000/-, the annual income comes to Rs.36,000/- and by applying the relevant multiplier to the age of the injured i.e., '18', the compensation comes to Rs.6,48,000/-, and 80% of which comes to Rs.5,18,400/-. Besides the above awarded amounts towards medical treatment i.e., an amount of Rs.2,27,978/- and towards transportation, an amount of Rs.9,300/-, the petitioner is also awarded Rs.30,000/-

towards extra nourishment, since he was taking treatment since long time and still continuing the same. Since the petitioner was awarded for permanent and partial disability which includes the loss of earnings, nothing is deducted towards his maintenance. No need or necessity for awarding any amount towards loss of earnings, as it is included in the compensation awarded for permanent and partial disability. Relying the decision of *R.D.Hattangadi v. Pest Control India Pvt Ltd*² where the petitioner is aged about 21 years and is unable to carry out his fishing business and also affected in his future life, an amount of Rs.50,000/- is awarded by the Tribunal towards pain and suffering and it is confirmed and also another amount of Rs.50,000/- awarded towards loss of amenities of life and the same is also confirmed. It is also the evidence of P.W.1 that he required future treatment and also one in two years he has to change each foot, ankle bumper and spring in knee joint and approximate cost of which is Rs.6,500/- and the Tribunal awarded Rs.50,000/- towards future medical expenses which also does not require any modification. The Tribunal awarded Rs.5,000/- towards loss of pleasure which is very meagre and the same has to be modified and accordingly it is enhanced to Rs.10,000/-. Thus, the total compensation comes to Rs.9,45,678/-. Similarly, petitioner is entitled to total compensation of Rs.9,45,678/- against owner and insurer jointly and severally. Since the owner is no more, respondents 2 and 3 are brought on record as his L.Rs. Their liability is only to the extent of estate belongs to the

² AIR 1995 SCC 55

owner in their hands. The appellant in M.A.C.M.A. No.91 of 2008 has to deposit the compensation amount with proportionate costs and interest at 7.5% per annum from the date of the petition i.e., 8.2.2005 till deposit or realization within 30 days from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same.

36. Accordingly, the appeal filed by the insurance company is dismissed and cross objections filed by the claimant is partly allowed modifying the award with costs as above.

37. Advocate fee is fixed at Rs.2,000/- for appeal as well as cross-objections.

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

December, 2017

JUSTICE N.BALAYOGI

skmr