

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 906 of 2008

JUDGMENT:

1. The appellant/claimant aggrieved by the Award and decree dated 05.11.2007 passed in MVOP.No.1192 of 2004 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Guntur, preferred this appeal on the grounds that the Tribunal failed to see that one Kasaiah was the owner of the goods; that the appellant/claimant was travelling in the crime vehicle at the time of accident as an agent of owner of the goods and that the Tribunal ought to have awarded compensation against the second respondent-Insurance Company also.

2. The case of the appellant/claimant is that he was working as Cleaner in the lorry bearing No. AP 27U 8317 to which, the first respondent was the owner. On 23.10.2004 at about 4.45 AM while he was travelling in the said lorry as an agent of owner of the Tomatoes, the driver of the said lorry drove it with high speed, in rash and negligent manner and dashed against the stationed lorry bearing No. AP16TT 7314 from its behind, as a result of which, the appellant/claimant sustained fracture to left hand, crush injury to left arm, left shoulder, left thigh and head injury,

3. Immediately after the accident, the appellant/claimant was shifted to Government General Hospital, Guntur and from there to Amaravathi Institute of Medical Sciences, Guntur for better treatment. Still he is unable to attend the works with his left hand.

4. The contention of learned Counsel for the second respondent-Insurance Company is that the appellant/claimant was not travelling in the lorry of the first respondent as an agent of the vegetable purchaser. He was an unauthorized passenger in the goods vehicle and hence the Tribunal rightly absolved the claim against the second respondent. Further, it is submitted that the driver of the said lorry did not possess valid driving licence at the time of accident. The Award of the Tribunal does not suffer from any legal infirmities warranting interference.

5. The Tribunal having considered the pleadings of both sides had framed the following issues for settlement.

- (a) Whether the accident occurred due to rash and negligent driving of the mini lorry bearing No.AP 27 U 8317 by its driver? And if so, whether the petitioner sustained injuries?
- (b) Whether the petitioner would be entitled for compensation? If so, what would be the just amount of compensation he would be entitled and against whom?
- (c) To what relief?

6. Before the Tribunal, the appellant/claimant himself was examined as P.W.1 and the doctor who treated him was examined as P.W.2 & Exs.A.1 to A.6 and Ex.X.1-case sheet were got marked on behalf of the appellant/claimant. On behalf of the respondents, R.W.1 was examined and Ex.B.1 insurance policy was got marked on their behalf.

7. The Tribunal on assessment of the evidence on record, found that the accident occurred due to the rash and negligent driving of the driver of lorry bearing No. AP 27U 8317 and on determination of compensation, the Tribunal awarded Rs.96,000/- to the appellant/claimant together with 7% interest from the date of petition till deposit, by directing the first respondent to deposit the said amount within two months from the date of the Award.

8. Now the point that arose for determination is:

“ whether presence of the appellant/claimant in the lorry of the first respondent at the time accident as an agent of owner of the goods, and whether the meager compensation awarded by the Tribunal can be sustained.”

9. The appellant/claimant himself was examined as P.W.1 and his evidence is that on 23.10.2004 he was present in the lorry of the first respondent bearing No. AP 27U 8317 as an

agent of the purchaser of Tomatoes, which were loaded in the said lorry. When the said lorry reached Chowdavaram village, the driver of the said lorry drove it at high speed and in rash and negligent manner without observing traffic coming from Chilakaluripeta side and dashed against stationed lorry bearing No.AP 16TT 7314 from its behind.

10. Ex. A.1 is the certified copy of FIR and Ex.A.2 is the certified copy of charge sheet. In Ex. A.1, there is clear assertion that the appellant/claimant was present in lorry bearing No. AP 27U 8317 which was driven by its driver with high speed and in rash and negligent manner and dashed the stationed lorry bearing No.AP 16TT 7314. After the accident, the driver and cleaner fed away and the driver and cleaner of lorry bearing No.AP 16TT 7314 brought out one person from the cabin of the lorry bearing No. AP 27U 8317 who was with head injury. The Investigating Officer after thorough investigation filed charge sheet Ex. A.2 against the driver of lorry bearing No. AP 27U 8317 finding that the driver of said lorry drove it at high speed and in rash and negligent manner and hit right side back rare portion of lorry bearing No.AP 16TT 7314.

11. In the said circumstances, the Tribunal having considered the ocular evidence of P.W.1 supported by documentary evidence at Exs.A.1 and A.2 came to the right conclusion that as on the date of accident, P.W.1 was travelling in

the lorry bearing No. AP 27U 8317 and that the accident was due to the rash and negligent driving of the driver of lorry bearing AP 27 U 8317 and there is no rebuttal evidence to show that the accident not occurred as spoken by P.W.1.

12. With regard to the injuries sustained by the appellant/claimant, there is evidence of P.W.2 besides the documentary evidence at Exs.A.3–Wound Certificate, Ex. A.4–Discharge summary, Ex. A.5–Medical prescriptions and Ex. A.6 Medical bills.

13. The evidence of P.W.1 is that he sustained grievous injuries all over the body including fracture to left hand, crush injury to left arm, left shoulder, left thigh and head injury. There is clear mention in regard there to in Ex.A.1–FIR and Ex.A.2–charge sheet.

14. P.W.2 is the proper person to speak about the injuries sustained by P.W.1 in the accident. His evidence is supported by Exs.A.3 to A6 and Ex.X.1. The evidence of P.W.2 supported by Ex.X.1-case sheet, Ex.A.3–Wound Certificate and Ex. A.4–discharge summary goes to suggest that P.W.1 was admitted in the hospital on 23.10.2004 with compound fracture of left ulna and compound fracture of Humeral Condyle as mentioned in Ex.A.3–Wound Certificate and he was discharged on 02.11.2004 under

Ex. A.4. The evidence of P.W.2 further established that a surgery was conducted on 23.10.2004 and he was treated by Square Nailing of Ulna and Wire Fixation of Humeral Condyle and the raw area on the medial side of the elbow was treated by skin drafting. However, the evidence of P.W.2 is that on examination of P.W.1, he find that still P.W.1 is unable to lift the weights on account of disability to the left hand due to sustaining injury and there is disability of 10% to 15%. Though P.W.2 was cross-examined at length by the second respondent, nothing was elicited to show that the injuries sustained by P.W.1 are healed completely and he is able to attend his work with left hand and doing manual labour work. It is established that it would be difficult for P.W.1 to carry on his daily works with the present condition of left hand.

15. The Tribunal having discussed the evidence of P.W.2 at length with the corroborated evidence of P.W.1 and supported evidence at Exs.A.3 and A.4, came to the right conclusion that the evidence of P.W.2 is acceptable and that P.W.1 suffered 15% disability.

16. Since there is no proof of income of the claimant and inasmuch as P.W.1 did not examine the purchaser of the vegetables under whom he was working, the Tribunal took his income at Rs.2,000/- per month. In my considered view, the assessment of monthly income of P.W.1 at Rs.2,000/- is very

meager and it does not support the settled law. As per the decision of the Apex Court in *The New India Assurance Company vs. Smt. Kalpana* (2007 ACJ 825), even a worker/labour gets monthly income of Rs.3,000/- per month. By applying the aforesaid decision of the Apex Court to the facts of the case on hand, I find that assessment of monthly income of P.W.1 at Rs.2,000/- by the Tribunal is erroneous and it warrants interference. In view of the same, it is just and reasonable to take the monthly income of P.W.1 at Rs.3,000/- or Rs.36,000/- per annum. As per X.1-case sheet, Ex.A.2-charge sheet, the age of P.W.1 is 25 years as on the date of accident. As per the decision of the Apex Court in *Sarala Varma vs. Delhi Transport Corporation* (2009 ACJ 1298), the appropriate multiplier applicable for the age of P.W.1 is '18'. The normal compensation would then work out for 15% of the disability to be $\text{Rs.}36000 \times 18 \times 15\% = \text{Rs.}97,200/-$.

17. Besides that, the Tribunal awarded Rs.15,000/- towards pain and suffering, Rs.5,000/- towards future medical expenses and Rs.5,000/- towards extra nourishment, which do not warrant any interference.

18. However, the Tribunal awarded Rs.6,000/- towards loss of income during the hospitalization period of three months by taking into consideration the monthly income at Rs.2000/-. Since monthly income of P.W.1 is now taken at Rs.3,000/- per month,

the compensation awarded by the Tribunal at Rs.6,000/- towards loss of income during treatment period requires modification. Accordingly by taking into consideration the monthly income of P.W.1 at Rs.3,000/-, the loss of income for hospitalization period of three months would be Rs.9,000/-.

19. The Tribunal also awarded Rs.369/- towards medical expenses which are covered by Ex. A.6—Medical bills for the purchase medicines as per Ex. A.5—Medical prescriptions. Hence, the same does not warrant any interference.

20. Thus, in all, the appellant/claimant is entitled to receive the total compensation of Rs.97200/- + 15000/- + 5000/- + 5000/- + 369/- + 9000/- = 1,31,569/-.

21. Now coming to the liability of payment compensation, it is to be seen that though the second respondent-Insurance Company took the plea that P.W.1 was unauthorized passenger, but it did not produce any independent evidence except examining its Senior Assistant as R.W.1 who is not an eye witness to the accident. Hence he is not the proper person to speak about the persons in the cabin of lorry bearing No. AP 27U 8317. However, R.W.1 has deposed that the appellant/claimant travelled in the lorry bearing No. AP 27U 8317 as an unauthorized passenger.

22. Pertinently, the Tribunal relying on the decision reported in MATJI BEVA Vs. HEMANTH JENE (1994 ACJ 1303) wherein the Orissa High Court held that contents of charge sheet cannot be relied upon on the face of strict evidence of the claimant and his witnesses, came to the conclusion that the appellant/claimant failed to establish that he was travelling in the crime lorry as an agent of the owner of the Tomatoes which were loaded in the lorry as on the date of accident and therefore he is not entitled to claim compensation against the second respondent-Insurance Company in terms of Ex. B.1 policy. The Tribunal further observed that in Column No.5 which deals with the occupation of the injured, P.W.1 originally wrote as 'vegetable vender', which he struck off and then wrote as 'agent' and again struck it off and wrote as 'cleaner'. Thereby the Tribunal came to the conclusion that the claimant was not able to decide what is his occupation. Further in Column No.3 of the petition, he stated that he was travelling in the first respondent's lorry from his native village—Nagireddipalli to Guntur as an agent of the person who purchased Tomatoes and he was transporting them on his behalf. In his cross examination, he stated that the Tomatoes were not purchased at Nagireddypalli, but they were purchased at Madanapalli and he was coming in the lorry from Madanapalli.

23. No doubt Tomatoes were purchased at Madanapalli and loaded in the lorry and P.W.1 was travelling in that lorry from

Madanapalli. However, in the cross examination, he stated that Tomatoes were being transported to Eluru from Madanapalli, but not to Guntur and that he did know to whom the Tomatoes were intended.

24. Basing on the said evidence, the Tribunal came to the conclusion that P.W.1 boarded the crime lorry near Nagireddipally village, but not at Madanapalli.

25. When the second respondent disputed his claim that he was travelling as an agent of the owner of the goods in the lorry at the relevant point of time, he ought to have at least examined Kasaiah, the alleged owner of Tomatoes, but he failed to do so. As such, the Tribunal drawn inference to the effect that non examination of said witness is adverse to PW.1. Further in Ex. A.1 there is a mention that P.W.1 was travelling in the lorry as a passenger. In the charge sheet, Ex. A.2 also, he was shown as an passenger. For the sake of argument, but not otherwise, even if the contents in Exs.A.1 and A.2 in regard thereto are ignored, the admission of P.W.1 during the cross-examination itself substantiates that he was travelling in the crime lorry as an unauthorized passenger at the relevant point of time. Since P.W.1 was the gratuitous passenger, the Tribunal held that the appellant/claimant is entitle for compensation only from the first respondent, who is the owner of the crime vehicle, who remained

ex parte and accordingly absolved the liability of second respondent-Insurance Company.

26. Since P.W.1 is a labour and a poor man, and Motor Vehicles Act being beneficiary legislation enacted for providing relief to the victims or their families and as also Ex.B.1 policy was in force, it is just and proper to direct the second respondent to pay the compensation to the appellant/claimant and then recover the same from the first respondent by treating the Award itself as decree.

27. Accordingly the appeal is partly allowed with proportionate costs and the Award and decree dated 05.11.2007 passed in MVOP.No.1192 of 2004 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Guntur is modified to the extent indicated hereinabove. Consequently, the second respondent-Insurance Company is directed to deposit the total compensation of Rs.1,31,569/- together with interest at 7.5% per annum from the date of petition i.e. 02.11.2004 till the date of deposit, after deducting the amount if any already paid, within a period of thirty days from the date of receipt of a copy of this judgment.

28. After deposit of the said compensation, the second respondent is at liberty to recover the said amount from the first respondent by treating the Award itself as decree.

29. On such deposit, the appellant/claimant is permitted to withdraw the said amount.

30. Advocate fee is Rs.2,000/-.

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



JUSTICE N. BALAYOGI

DATED - 11th August, 2017.
Msnr_x