

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. Nos. 302 and 274 of 2008

COMMON JUDGMENT :

These appeals arose out of common order in M.V.O.P. No.269 of 2004 in respect of death and M.V.O.P. No.553 of 2004 in respect of injuries to the claimant. Both O.Ps. are filed under Section 166 of Motor Vehicles Act. Hence, the appellant in both appeals is referred as appellant and respondents as respondents. Most of the grounds in both appeals are common except ground Nos.4 and 5 in both appeals.

2. Both appeals arose out of common order and decree dated 4.6.2007 made in M.V.O.P. No.269 of 2004 and M.V.O.P. No.553 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Court, Vizianagaram, awarding compensation of Rs.6,96,000/- with proportionate costs and interest at 7.5% per annum from the date of the petition till the date of realization of the amount against respondents 5 and 6 jointly and severally in O.P.No.269 of 2004 and awarding compensation of Rs.60,000/- with proportionate costs and interest at 7.5% per annum from the date of the petition till the date of realization against respondents 5 and 6 jointly and severally in O.P.No.553 of 2004.

3. Both O.Ps. against respondents 1 to 3 were dismissed without costs.

4. In O.P. No.269 of 2004 the claim of claimants is as follows :

Petitioners 1 and 2 are children of the deceased Sambangi Jagannagari Laxmi and 3rd petitioner is the mother of the deceased. Respondents 2 and 3 are employer of 1st respondent. The 4th respondent is the driver of the auto bearing No.AP 35 T 7339 and the 5th respondent is the owner of the said auto. The 6th respondent is the insurance company. On 13.1.2004 at 10.15 AM, the passenger by name Sambangi Jagannagari Laxmi boarded the auto bearing No.AP 35 T 7339 near Collector Office to go to Gajapathinagaram Sub-Registrar's Office to attend her duties. While the auto was proceeding, one type of sound came from the front wheel of the auto and the passengers noticed that sound and warned the auto driver to see the front wheel of the auto. The auto driver neglected the passengers' caution, drove the auto with such mechanical sound coming from the front wheel of the auto. When the auto reached near the house of the Sarpanch of K.L.Puram, the front axle shaft of front wheel was broken and due to that act, the front wheel of the auto was disconnected. Therefore, the auto driver could not control the auto in such high speed and auto lost its control, gone away to its right side across the road. By that time, RTC bus which was coming from the Gajapathinagaram towards Vizianagaram, being driven by 1st respondent in high speed in

rash and negligent manner, dashed the auto which come across the road suddenly due to breaking of shaft of front wheel of the auto, even though there was a chance of avoiding the accident by applying the air breaks and turn the bus to the extreme left side of the road, as road is very wide, because it is NH 43. The accident occurred due to rash and negligent driving of both drivers only.

5. The accident would not have occurred if the auto driver checked the front tyre of the auto after caution of the passengers in the auto and if the RTC bus driver took care in turning the bus to its left side and applied air breaks of the said bus.

6. In the accident Sambangi Jagannagari Laxmi sustained grievous and dangerous injuries and died on the spot. The other passengers sustained grievous and simple injuries.

7. The deceased was aged 40 years, she used to work as Record Assistant in Sub-Registrar's office, Gajapathinagaram and used to earn Rs.5,714/- per month in gross. The petitioners 1 and 2 lost their father long back and from that period they were under the care and custody of their beloved mother who died in the said road accident. The petitioners 1 and 2 are dependents upon earnings of the deceased from the period of their father's death. The 1st petitioner is studying B.Tech in Githam Institute of Engineering and 2nd petitioner, who is the daughter of the deceased, is also studying in Vizianagaram.

8. The claim of petitioners in M.V.O.P. No.553 of 2004 in brief is as follows :

On 13.1.2004, the petitioner boarded the auto bearing No.AP 35 T 7339 as passenger at Vizianagaram and when the auto was proceeding towards RTC office on far left side of the road and when the said auto reached near President's house, K.L.Puram, at about 10.30 AM, suddenly the front wheel of the auto was broken, by that time, an APSRTC bus bearing No.AP 10 Z 6328 came in opposite direction, driven in rash and negligent manner with high speed even without blowing any horn and following the traffic rules and dashed the auto, as a result, the petitioner sustained multiple fracture injuries on his left clavicle, left ribs and left pubic bone and other injuries all over the body. Immediately, the petitioner was taken to District Headquarters Hospital, Vizianagaram, subsequently, he was referred to K.G.Hospital, Visakhapatnam, where the doctor found multiple fractures on his left clavicle, left ribs and left pubic bone and other injuries all over the body. At the time of discharge, doctors advised him to take further treatment using medicines and extra-nourishment. The accident occurred only due to rash and negligent driving of the 1st respondent driver. Had the driver taken minimum care, accident would not have occurred.

9. The claimant is 35 years old and hale and healthy. He was labourer, thereby used to earn Rs.100/- per day, but due to multiple injuries he could not attend the duties, thereby lost his daily income.

He cannot lift any weights with his left hand, he cannot move, walk as he moved or walked prior to the accident. His left leg was permanently disabled and still the petitioner is suffering from pains and he is using medicines and taking treatment. He claimed Rs.2,00,000/- towards special and general damages. All respondents are jointly and severally liable to pay compensation.

10. The common contentions of the appellant in both appeals is that the Tribunal erred in holding that the accident is due to rash and negligent driving of the driver of the auto in spite of F.I.R. and charge-sheet clearly disclosed that the accident was due to rash and negligent driving of the driver of APSRTC bus and more particularly the plea of the appellant is that due to rash and negligent driving of both drivers of APSRTC and Auto the accident was occurred. Since the driver of RTC was not examined, it shall be presumed that due to rash and negligent driving of the driver of RTC bus, the accident was occurred and accordingly the Tribunal should have held that the accident was due to rash and negligent driving of the driver of RTC bus. The Tribunal awarded excessive and exorbitant award, which is contrary to law and evidence on record.

11. In M.A. C.M.A. No.302 of 2008 the additional ground raised is that the Tribunal ought to have taken net salary of the deceased instead of gross salary and also erred in following II schedule for the purpose of applying multiplier, as the income of the deceased

exceeded Rs.40,000/- and particularly when M.V.O.P. was filed under Section 166 of the Motor Vehicles Act.

12. Besides that, in M.A. C.M.A. No.274 of 2008 the additional contention is that the Tribunal erred in awarding Rs.25,000/- towards pain and suffering and ought not to have awarded Rs.20,000/- towards functional disability.

13. Respondents 4 to 6 filed counters separately in M.V.O.Ps..

14. The 3rd respondent filed counters in both M.V.O.Ps. contending that there is no documentary evidence to show that the deceased Laxmi travelled in the auto as a passenger. As per the allegations there is some kind of defect in the front wheel of the auto and despite cautions and warnings given by passengers the 4th respondent did not hear the same and drove the auto in rash and negligent manner due to which the front wheel of the auto was broken and 4th respondent could not control the auto which turned across the road and hit the bus.

15. The 1st respondent in M.V.O.Ps. gave a statement before the RTC officials that while he observed the wheel of the auto was broken and the auto turned across the road in opposite direction, he stopped the bus, in spite of the same, the auto forcibly came on the bus across the road and hit the bus which was in stopping condition. There is no rash and negligent driving on the part of the RTC driver and the accident was due to fault of the driver of the auto.

16. The contention of the 4th respondent in M.V.O.Ps. is that the accident was not occurred due to negligence of the auto driver - 4th respondent. The auto is having valid insurance at the time of accident and the same was in force. The amount claimed is excessive. This Respondent is not liable to pay any compensation.

17. The 5th respondent in both M.V.O.Ps. besides contentions of 4th respondent contended that the driver of the auto bearing No.AP 35 T 7339 is having valid and effective driving licence at the time of the accident. The 6th respondent being the insurer of the auto has to indemnify the liability of the 5th respondent and 6th respondent is liable to pay the compensation. According to allegations in the petition, the accident took place due to negligent driving of the driver of RTC bus and a case is registered against him, therefore, if at all the Court concludes that petitioners are entitled for compensation, it is from respondents 1 and 2. According to allegation, the auto went towards the right side due to disconnection of front wheel which is an 'act of god' and there is no evidence to show that the deceased was working as Record Assistant and earning Rs.5,714/- per month. The petitioners 1 and 3 in O.P. No.269 of 2004 are not legal heirs of the deceased, therefore, cannot claim any compensation.

18. The 6th respondent filed counter in both M.V.O.Ps. denying the averments of petitions and contended that the driver of the auto bearing No.AP 35 T 7339 is not having valid and effective driving

licence at the time of accident. The particulars of the policy given by petitioners are not correct.

19. Having considered the pleadings in the claim petitions and counters the following common issues were settled for trial :

- i) Whether the accident occurred due to rash and negligent driving of APSRTC bus bearing No.AP 10 Z 6328 by driver/R1 and auto bearing No.AP 35 T 7339 by driver R4?
- ii) Whether the petitioners are entitled for any compensation, if so from which of the respondents?
- iii) To what relief?

20. In support of claim of claimants in O.P.No.269 of 2004 P.Ws.1 to 3 were examined and Exs.A1 to A4 and Ex.X1 were got marked. On behalf of respondents, R.W.1 was examined and Ex.B1 was got marked.

21. In support of claim of claimant in O.P.No.553 of 2004 P.Ws.1 and 2 were examined and Exs.A1 to A7 and Exs.X1 and X2 were got marked. On behalf of respondents, R.W.1 was examined and no documents were got marked.

22. Now the point that arises for determination is :

“whether the findings, conclusion and award suffer from legal infirmities warranting interference in the appeal.”

23. The learned counsel for the appellant in both appeals contended that when the plea of claimants is that the accident was

occurred due to rash and negligent driving of both drivers of auto and RTC bus, the finding of the Tribunal that the accident was occurred due to rash and negligent driving of the auto driver is contrary to law and the evidence on record. It is further contended that the Tribunal ought to have held that the accident occurred due to rash and negligent driving of RTC bus. Further, the Tribunal erred in awarding Rs.25,000/- towards pain and suffering and Rs.20,000/- towards functional disability in M.V.O.P. No.553 of 2004.

24. In M.A. C.M.A. No.302 of 2008 the additional contention of the appellant is that the Tribunal ought to have taken net salary instead of gross salary following the decision in *Asha and Others Vs. United India Insurance Company Ltd. and another* (2004 ACJ 448) and wrong multiplier was applied.

25. The learned counsel for the appellant in M.A. C.M.A. No.302 of 2008 contended that the accident was due to rash and negligent driving of the driver of the RTC bus, whereas the Tribunal wrongly held that the accident occurred due to rash and negligent driving of the driver of the auto.

26. On the other hand, the respondent-RTC authorities contended that there is no negligence on the part of the driver of the RTC bus and the accident is only due to negligence of the auto driver and the findings of the Tribunal do not warrant any interference.

27. Coming to the evidence of witnesses in M.V.O.P.No.269 of 2004, the 2nd petitioner is examined as P.W.1, whose evidence is that the 1st petitioner is the elder brother, 3rd petitioner maternal grand mother, whereas the deceased is their mother. In the chief itself P.W.1 stated that she is not an eyewitness to the accident, therefore, necessarily seek independent material evidence. P.W.3 is a passenger in the auto bearing No.AP 35 T 7339, his evidence is that he along with the deceased boarded the auto at Venkateswara theatre, Vizianagaram to go to Gotlam Village, whereas the deceased wanted to go to Gajapathinagaram. His further clinching evidence is that when auto reached K.L.Puram, a bus came in opposite direction at high speed and both vehicles dashed each other. During cross-examination P.W.3 stated that he did not notice that the auto's front wheel was broken and separated from the auto just before the accident. He denied the suggestion that the passengers in the auto requested the driver of the auto to stop it as a sound was coming from the front wheel of the auto, but the driver did not stop and that the front wheel of the auto separated from the auto and the driver could not control the auto and dashed against the bus coming in opposite direction.

28. R.W.1 is the conductor of the bus whose evidence is that on 13.1.2004 he was on duty on the bus bearing No.AP 10 Z 6328 plying between Salur to Visakhapatnam. When the bus reached K.L.Puram community hall, at that time he was at the driver after completion of the work. At that time the bus was proceeding slowly on

the left side of the road. He observed an auto on the right side of the road and heard some cries of passengers of the auto, then the driver stopped the bus, but the driver of the auto drove the auto in uncontrollable speed and the wheel of the auto was broken, as such, the auto driver could not control the auto, took left turn and dashed the stationed bus on the left side of the bus. The further evidence of R.W.1 is that traffic police, Vizianagaram filed criminal case wrongly against the driver of the RTC bus. In the criminal case the driver of the RTC was acquitted.

29. During cross-examination he stated that he cannot say the speed of the bus at the time of the accident. At a distance of 10 feet the bus driver stopped the bus after hearing the cries. He sat on the conductor seat at the time of the accident. In the chief evidence, R.W.1 stated that after completion of work at the time of accident he was at the driver, but during cross-examination, he contradict the chief and stated that he sat in his conductor seat at the time of the accident. The clear admission during cross-examination is that he did not give any report to the police about the accident. He even did not go to the police station. At least he did not file copy of the report given by the driver to the Police. The evidence of P.W.3 is that the auto driver drove the auto at high speed and when the auto reached K.L.Puram, a bus came in opposite direction at high speed and both vehicles dashed against each other.

30. Coming to the evidence of witnesses in M.V.O.P. No.553 of 2004, the evidence of P.W.1 is that on that day i.e., on 13.1.2004 he boarded the auto to go to his village and the auto bearing No.AP 35 T 7339 reached near K.L.Puram President house, suddenly front axle shaft of the auto was broken and when the said auto was stopped, an RTC bus bearing No.AP 10 Z 6328 came in opposite direction driven by the 1st respondent in rash and negligent manner with high speed without following the traffic rules and dashed against the auto.

31. During cross-examination P.W.1 stated that apart from the driver, there were three persons in the auto at the time of the accident, but admits that in the F.I.R. it is asserted that there were six persons apart from the driver in the auto at the time of the accident. While the auto was proceeding towards Gajapathinagaram the tyre was burst, but he does not know whether in the report it was mentioned that the front axle was broken and the auto turned towards right side. He denied the suggestion that there were six persons in the auto and the front wheel of the auto was broken, the driver could not control the auto and dashed the RTC bus. He further denied the suggestion that the accident was due to rash and negligent driving of the auto. During cross-examination by the 6th respondent, P.W.1 admits that after the auto was stopped the RTC bus dashed the auto.

32. In both M.V.O.P. Nos.269 and 553 of 2004 the F.I.R. is marked as Ex.A1, M.V.I. report is marked as Ex.A3 and charge-sheet

is marked as Ex.A4. The only one Ex.B1, which is the copy of the policy, is marked in C.C. No.269 of 2004.

33. The accident occurred on 13.1.2004 at 10.30 hours at K.L.Puram on N.H.43. This fact is not in dispute. A perusal of Ex.A1 goes to suggest that Pedareddy Venki Naidu made a complaint on 13.1.2004 at 12.30 hours with regard to the accident occurred at 10.30 AM i.e., within two hours from the accident. In F.I.R. under Ex.A1 it is stated that on 13.1.2004 at 9.15 he started in Korlam village and got down the bus at Collectorate and to go to real estate office, boarded the auto bearing No.AP 35 T 7339 wherein there are six passengers. The deceased was also present in the auto. When the auto reached the house of Sarpanch at K.L.Puram on N.H.43 road, the front wheel of the auto was broken and it was separated from the auto, as such, the auto was shaken full towards right side and at that time the accused was coming from Salur and drove the RTC bus bearing No. AP 10 Z 6328 in high speed and in rash and negligent manner, dashed the front portion of the auto and in that collision, Somu Murthy, S.Satyavatamma, V.Adinarayana, P.Gowri Naidu, G.Nagaiah and S.Ramana passengers in the auto sustained injuries. The driver lost the control over the auto and in the meanwhile the RTC bus bearing No.AP 10 Z 6328 came from Gajapathinagaram side towards Vizianagaram driven in high speed, lost the control and dashed the auto with front portion of the bus, as a result, the passengers in the auto fell down and the auto turned turtle.

The Investigating Officer also filed the charge-sheet against Rangumudri Prasadarao, the driver of the RTC bus bearing No.AP 10 Z 6328 finding that the driver of the RTC bus drove the bus with high speed in rash and negligent manner and lost the control and dashed the auto bearing No. AP 35 T 7339, caused the death of Sambangi Jagannagari Laxmi and injuries to three persons in the auto. The Investigating Officer visited the scene of offence in the presence of mediators and prepared rough sketch and got photographed the scene of offence, conducted the inquest over the dead body and arrested the driver of the RTC bus on 17.1.2004.

The Motor Vehicle Inspector inspected the RTC bus bearing No.AP 10 Z 6328 at 2.30 PM at Vizianagaram traffic police station on 14.1.2004 on the same day he also inspected the auto bearing No. AP 35 T 7339 at 3.30 PM at K.L.Puram on N.H.43 near 543/6 KM stone. The MVI noted left side head light, left side cowl and left side bumper were damaged and observed the auto wherein, wind shield glass, top and left side signal light was damaged and left side body and body partition was damaged. The MVI conducted road test of the RTC bus and found the breaks are in working condition. The auto's road test was not possible due to accidental damage and found break system was intact and ultimately opined that the accident was not due to any mechanical defect of the bus bearing No.AP 10 Z 6328, but the accident may be due to the sudden breaking of front axle shaft of the auto bearing No.AP 35 T 7339 and due to breaking of front axle shaft,

front tyre was disconnected. So according to the opinion of M.V.I. under Ex.A3, the accident was not due to mechanical defect of the vehicle, but due to breaking of front axle shaft, front tyre of the auto was disconnected.

34. It is the evidence of P.W.3 in O.P.No.269 of 2004 that at the time of accident the auto was proceeding towards Gajapathinagaram, whereas RTC bus came in opposite direction from Gajapathinagaram towards Vizianagaram. The Motor Vehicles Inspector inspected both RTC bus bearing No.AP 10 Z 6328 and auto bearing No.AP 35 T 7339 on 14.1.2004. He inspected the bus at Vizianagaram Traffic Police Station and the auto at the accident spot. The left side head light, left side cowl and left side bumper was damaged to RTC bus bearing No.AP 10 Z 6328. Whereas, wind shield glass, top and left side signal light of the auto bearing No.AP 35 T 7339 were damaged and left side body and body partition was also damaged. So, according to the report of Motor Vehicle Inspector, there is damage to both vehicles on the left side, particularly left side body of the auto was damaged and the left side head light, left side cowl and left side bumper of the RTC bus was damaged which clearly indicate that the left front side portion of the bus came in contact with left side body of the auto.

The F.I.R. under Ex.A1 and charge-sheet Ex.A4 supported the evidence of P.W.3 who in the chief itself deposed that the driver of the auto drove the auto at high speed, the bus came in opposite

direction at high speed and both vehicles dashed against each other and ultimately his evidence is that the accident took place due to negligence of both drivers. There is well suggestion to P.W.3 though denied that passengers in the auto requested the driver of the auto to stop the auto as sound was coming from the front wheel of the auto, but the driver did not stop the auto and that the front wheel of the auto separated from the auto and the driver could not control the auto and dashed against the bus coming in the opposite direction.

35. P.W.1 in M.V.O.P. No.553 of 2004 who is injured also stated in the chief itself that he was travelling in the auto bearing No.AP 35 T 7339 and when the auto reached near K.L.Puram President's house, suddenly front axle shaft of the auto was broken and when the said auto was stopped, an RTC bus bearing No.AP 10 Z 6328 came in opposite direction driven by the 1st respondent in rash and negligent manner with high speed without blowing horn and without following the traffic rules and dashed against the auto. During cross-examination, he stated that apart from the driver, there are three passengers, but admits that in the F.I.R. it was mentioned that apart from driver, there were 6 persons in the auto at the time of the accident. He also denied the suggestion that while he was travelling in the auto the front axle was broken and the driver could not control the auto and dashed the RTC bus. He denied the suggestion that the accident took place due to rash and negligent driving of the driver of the auto. The Investigating Officer mentioned that the front axle was broken and the

driver of the auto lost control of the auto and it dashed to the bus. On the claim petition itself it is specifically pleaded that while the driver of the auto was driving the auto bearing No. AP 35 T 7339, one type of sound was coming from the front wheel of the auto and the passengers noticed that sound and warned the auto driver to see the front wheel of the auto, but the auto driver neglected the passengers' caution and drove the auto with such mechanical sound making from front wheel of the auto and whenever the said auto reached near the house of Sarpanch, the front axle shaft of the front wheel was broken and due to that act the front wheel of the said auto was disconnected, therefore, the auto driver could not control the auto in such high speed and auto lost its control and rushed away to right side across the road and at the same time, the RTC bus which was coming from Gajapathinagaram towards Vizianagaram being driven by the 1st respondent with high speed in rash and negligent manner, dashed the auto.

Therefore, the circumstances clearly go to suggest that it is the driver of the auto who drove it with high speed in rash and negligent manner and even though the passengers in the auto requested the auto driver to stop it as a sound was coming from the front wheel of the auto, the auto driver without hearing their words proceeded, as such the front wheel axle was broken and separated from the auto and further, as a result he lost control of the auto and went extreme right side of the road, which is clear from the very damage to vehicles. The left side body of the auto came into contact with the left side bumper of

the RTC bus, therefore, at the time of accident as deposed by R.W.1 the driver of the RTC bus having observed that the auto is coming on the right side of the road in an uncontrollable speed, stopped the bus, even though the auto dashed the bus on its left side.

36. The Tribunal relied on the decision in *New India Assurance Co. Ltd., Divisional Office, Madras Vs. B.Malla Reddy and others* (2002 (6) ALD 137 (DB)(AP) wherein it is observed in similar circumstances that in a collision between two vehicles, it is only the owner of the vehicle whose driver is at fault and its insurance company are liable to pay and the owner of the other vehicle which is not at fault or its insurance company is not liable to pay any compensation. Similarly, the Tribunal held that the accident was due to rash and negligent driving of the driver of the auto bearing No.AP 35 T 7339, such a finding is legal, valid and do not suffer from any legal infirmities warranting interference.

37. With regard to payment of compensation to petitioners in O.P.No.269 of 2004, they have to prove that they are dependents/legal heirs of the deceased Sambangi Jagannagari Laxmi, besides proving the age, occupation and income of the deceased.

38. P.W.1 is the 2nd petitioner and the deceased who died in the accident is their mother. The 3rd petitioner is maternal grand mother. His mother was 38 years old by the date of accident and she used to work as Junior Assistant in Sub-Registrar's office, Gajapathinagaram and used to earn Rs.5,714/- per month as salary.

After the death of their mother, herself and her brother stopped studies. P.W.2 is the Sub-Registrar, Gajapathinagaram, whose evidence is that the deceased Sambangi Jagannagari Laxmi joined in service on 8.4.1996 and working as Junior Assistant in Sub-Registrar's Office, Gajapathinagaram and as per SR her date of birth is 05.12.1964. Her gross salary was Rs.5,709/- and total deductions are Rs.450/- and her net salary is Rs.5,259/-. Ex.X1 is the copy of SR.

39. Therefore, the evidence of P.W.1 corroborated with P.W.2 supported by Ex.X1 goes to suggest that the deceased Sambangi Jagannagari Laxmi worked as Junior Assistant in the Sub-Registrar's Office, Gajapathinagaram. She joined in service on 8.4.1996 and her date of birth as per Ex.X1 is 5.12.1964. The accident occurred on 13.1.2004, therefore she must have crossed 39 years by the date of accident. It is an appeal filed by the Insurance company. With regard to compensation, the contention is that the Tribunal erred in following the II schedule for the purpose of multiplier, inasmuch as the annual income of the deceased exceeds Rs.40,000/-, whereas under Section 166 of the Motor Vehicles Act, the Tribunal should follow ***Bhagwan Dass v. State of Haryana*** (AIR 1987 SC 2049) for the purpose of multiplier, accordingly it ought to have applied multiplier '12.79', instead of multiplier '15'. As per ***Sarla Verma v. DTC*** ((2009) 6 SCC 121) the multiplier for the age group of 36 to 40 is 15. The Tribunal rightly applied the multiplier '15'. The Tribunal also took the gross salary of the deceased i.e., Rs.5,709/-, but it has to be taken net salary

deducting income tax payable. Since the claimants are three in number, the deduction towards personal and living expenses of the deceased is $1/3^{\text{rd}}$. Accordingly, the Tribunal also rightly deducted $1/3^{\text{rd}}$ and assessed dependency and awarded the compensation of Rs.6,96,000/- and the same is apportioned at the rate of Rs.3,23,000/- to each petitioners 1 and 2 and Rs.50,000/- to the 3^{rd} petitioner.

40. In the case of MA CMA No.274 of 2008, it is a case of injuries. The evidence of P.W.1 is that in the accident he sustained multiple fractures of left clavicle, left ribs and left pubic bone and other injuries all over the body. Immediately, he was taken to District Headquarters Hospital, Vizianagaram, subsequently, he was referred to K.G.Hospital, Visakhapatnam, where he took treatment as inpatient for about 2 months and undergone surgery. P.W.2 is the Doctor who treated P.W.1 in the Government Hospital, Vizianagaram. He confronted Ex.A2 – wound certificate. According to Ex.A2, P.W.1 was examined on 13.1.2004 at 9.20 AM and the wound certificate discloses that P.W.1 complained (i) pain and tenderness over left thigh region; (ii) pain and tenderness over left side ribs (fracture); and (iii) 2 abrasions over left fore arm. P.W.2, the Doctor on 21.11.2005 examined P.W.1 with reference to wound certificate under Ex.A2 and latest x.ray under Ex.X6 and found that he has got old malunited fracture left clavicle with mild restriction of left shoulder movements and old multiple malunited fracture ribs on left side and old fracture superior and inferior pubicrami (pelvis) on left side. As he is the

Member of the District Medical Board, he assessed the percentage of the disability at 20% as per Ex.A7 - disability certificate which is partial and permanent.

41. Ex.A2 further goes to show that Ex.X2 – xray was taken for the injuries which reveal fracture of left clavicle, fracture of ribs on the left side and fracture of superior and inferior pubicrami (pelvis) on left side and the Doctor opined that the injuries were grievous in nature. P.W.2's further evidence is that on account of the disability, P.W.1 will have difficulty in lifting the heavy weights with left hand and doing over abduction activities with left hand and he will have difficulty in doing her labour work. The evidence of P.W.2 supported by Ex.X1 case sheet, Ex.X2 – xray maintained in the Government Hospital, Vizianagaram and latest x.ray in Ex.A6 supported by Ex.A7 well established that there is a fracture of left clavicle, fracture of ribs on the left side and fracture of superior and inferior pubicrami (pelvis) on left side. In the cross-examination, P.W.2 stated that he has not seen P.W.1 prior to examination and issued Ex.A7 – disability certificate. The only suggestion to P.W.2 is that the disability stated at 20% is on higher side. The evidence of P.W.2 supported by Ex.X1, X2, A7, A2 and A6 inspires confidence and established that the petitioner P.W.1 sustained (i) fracture to left clavicle, (ii) fracture to ribs on the left side; and (iii) fracture of superior and inferior pubicrami (pelvis) on left side. The Tribunal, having considered nature of injuries and sufferance thereon, awarded Rs.25,000/- towards injuries. Further,

it finds that P.W.1 having received such injuries he could not have attended any work for five months while taking necessary treatment, besides that P.W.1 might have spent good amounts for extra-nourishment, transportation to the hospital and awarded Rs.5,000/- towards those expenses. Even though there is no proof of avocation and income, the trial Court assessed the income at Rs.1,500/- being reasonable under such circumstances and he could not have attended the work for five months, there is loss of earnings @ Rs.1,500/- per month for five months and awarded Rs.7,500/-.

The petitioner filed medical bills worth of Rs.10,087.94 Ps. and in the evidence P.W.1 it is stated that nearly Rs.50,000/- were spent towards medicines, but he could only file medical bills under Ex.A5. But, the Tribunal found that all the medical bills are manual and without examining concerned shop keepers with reference to relevant records, it is not acceptable to accept them. The evidence on record only shows that he was given treatment in Government Hospital which is free of cost, however it is well known fact that in case like this parties are not supplied with all necessary medicines and they have to purchase the medicines which are prescribed outside. Therefore, awarded Rs.2,500/- towards the medicines.

42. Absolutely there is no evidence produced by the claimant that he is taking treatment after 2004. But, the Tribunal taking into consideration the nature of injuries received by P.W.1 supported by the evidence of P.W.2 the Member of the Medical Board who issued

Ex.A7 disability certificate came to the conclusion that there is no basis to say that the petitioner is not able to do any work having become totally disabled person, therefore, the Tribunal found that it is deemed that he is able to do work as before. Therefore, the disability of 20% given is taken as functional disability and Rs.20,000/- is awarded being reasonable amount. Thus, the total award comes to Rs.60,000/-.

43. Since appeals are filed by the Insurance Company and no cross-appeal or cross-objections have been filed by claimants, I am not going into the amounts awarded, whether they are just compensation or not. To my view the amounts awarded towards functional disability is very meagre and the Tribunal having considered the disability at 20%, ought to have awarded more than what was awarded.

44. In the facts and circumstances discussed above and findings therein, I am of the considered view that the reasons and conclusions and findings that the accident was due to rash and negligent driving of the driver of the auto bearing No.AP 35 T 7339 and the claimant in O.P. No.553 of 2004 sustained fracture of left clavicle, fracture of ribs on the left side and fracture of superior and inferior pubicrami (pelvis) on left side, which is supported by Exs.A2, A6 and xray are legal and the disability stated by P.W.2 is at 20% which is noted in Ex.A7 – disability certificate, which is held to be functional disability, and the amounts awarded by the Tribunal are very meagre and there is nothing illegal in the Award in respect of appellants and the Award and Decree in both appeals is legal, valid and

do not suffer from any legal infirmities warranting interference in appeals.

45. However, considering the facts in issue, the appellant is directed to deposit the compensation amounts within 45 days from the date of receipt of a copy of this judgment after deducting the amounts, if any, already deposited or paid and the claimants can withdraw the amount as apportioned and directed by the Tribunal in the Award.

46. In the result, both the appeals are dismissed with costs, while confirming the common order and decree dated 4.6.2007 made in M.V.O.P. No.269 of 2004 and M.V.O.P. No.553 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Court, Vizianagaram.

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

JUSTICE N.BALAYOGI

19.02.2018

SKMR