THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.4329 of 2004

JUDGMENT:

Having not been satisfied with the quantum of compensation awarded, the injured-claimant had preferred this Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, assailing the award, dated 17.08.2004, in M.V.O.P.No.251 of 2001, passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kadapa.

2. I have heard the submissions of Sri V.Bhaskara Reddy, learned counsel appearing for the appellant/claimant ('the claimant', for brevity) and of *Sri R.Venkata Rao*, learned counsel for the 2nd respondent/insurance company ('the insurance company' for brevity). The 1st respondent having been served with notice did not enter appearance.

3. The facts leading to the filing of the present appeal by the claimant may be stated, in brief, as follows:

On 07.01.2000, at about 4.30 PM, the claimant sustained injuries when the Motor Cycle bearing registration no.AP04-B-8272 on which he was travelling towards Madhavaram as a pillion rider was involved in an accident with the jeep bearing registration no.AP 04A 7906. Hence, he filed the claim petition claiming a compensation of Rs.4,00,000/- from the respondents 1 and 2, the owner/insured and the insurer of the said jeep. The owner-cum-insured had remained *ex parte* before the Tribunal. The insurance company resisted the claim petition by raising various contentions. During the course of trial, the claimant and a supporting witness were examined as PWs 1 and 2 and exhibits A1 to A10 were marked on the side of the claimant. No oral and documentary evidence was adduced on the side of the insurance company. On merits, the Tribunal by the award impugned in this appeal partly allowed the claim petition with proportionate costs and awarded a compensation of Rs.1,54,000/- with interest at 9% per annum simple from the date of the petition till the date of realization and fastened joint and several liability on the insured and insurer to pay the same to the claimant. As already noted, the claimant, who is not satisfied with the said amount of compensation awarded, preferred this appeal. It is stated that no appeal or cross objections are filed by the insurance company.

4. Learned counsel for the claimant would contend as follows:

The Tribunal awarded a meagre compensation in a case where the claimant sustained grievous injuries and suffered permanent partial disability as a result of the injuries sustained in the accident. The claimant filed exhibit A4, medical certificate issued by the District Medical Board, and exhibit A5, disability certificate issued by Dr. G.Venkata Subbaiah, wherein the disability was assessed at 60%. The Tribunal ought to have noted that the disability certificate issued by the Medical Board requires no further proof by examination of one of the Doctors on the Board. The Tribunal ought to have seen that the claimant sustained fracture of bones of right leg (tibia and fibula), right thigh (femur) besides fracture of frontal region and of radius and that the said injuries, which are grievous in nature caused pain, suffering and mental agony and had taken a long time for healing and that despite treatment, the said injuries did not completely heal and resulted in permanent partial disability. The Tribunal ought to have seen that the claimant received treatment for a long time as an outpatient and underwent various operations for the fracture injuries in various hospitals and that he was aged 40 years at the time of the accident and that the disability affected the functional ability and earning capacity of the claimant. The Tribunal ignored the evidence adduced by the claimant and erroneously fixed the annual income of the claimant at Rs.15,000/- though the monthly income of the claimant is

Rs.4,000/- and erroneously awarded a meagre compensation of Rs.1,44,000/- under the head 'loss of earning capacity' and failed to award proper compensation under the group of heads 'medical, hospital, attendant's, extra nourishment, transport and incidental charges'. He had lost his earnings and also earning capacity. The Tribunal awarded paltry amounts of compensation under various heads without properly appreciating the facts and the evidence adduced. The Tribunal ought to have awarded just and fair compensation, if necessary, by awarding more compensation than claimed by following the settled legal position. Hence, reasonable, just and fair compensation to which the claimant is entitled to under facts and in law may be awarded by allowing the appeal.

5. On the other hand, the learned counsel for the insurance company would contend as follows:

The Tribunal had awarded a fair amount of compensation of Rs.1,54,000/- with interest at the rate of 9%per annum simple. In the absence of any documentary evidence and credible evidence as regards the occupation, income and permanent disability, if any, suffered by the claimant, the Tribunal had rightly determined the compensation based on the available evidence after having properly appreciated the evidence. Even though a doctor, who treated the claimant or a doctor, who issued the disability certificate was not examined, the Tribunal awarded just compensation. The claimant did not produce any record from the hospital to show the nature and length of inpatient treatment and also further failed to adduce necessary evidence to prove the medical, hospital and other expenses. There is absolutely no evidence with regard to the disability, if any, suffered and its impact on his earning capacity as no doctor was examined to support the clam in that regard. The compensation awarded cannot be said to be not reasonable, just and fair, in the facts & circumstances of the case. The claimant is not entitled to any enhanced compensation. The appeal is devoid of merit and is liable to be dismissed.

6. The points that arise for determination in this appeal are:

(i) Whether the compensation awarded by the Tribunal is not just and fair in the facts and circumstances urged by the claimant? And, if so, what shall be the just and fair compensation to be awarded to the claimant in this appeal?

(ii) To what relief?

7. POINT No.1:

7.1 On the aspect of injuries and allied aspects, the case of the claimant is this: - "He had suffered the following injuries: '(i) A lacerated bleeding injury of ½" on the middle of scalp; (ii) A lacerated injury of 4' X 1' on upper third of right leg; (bone exposed} (iii) deformity of right wrist;' X rays taken revealed fracture of tibia & fibula of right leg; fracture of lower end of femur of right thigh; fracture of frontal region of skull; and, fracture of radius of right wrist. He was immediately taken to Government Hospital, Kadapa and was treated by Dr.Venkata Subbaiah. He underwent operations and the fracture injuries were corrected by fixing implants. During the pendency of the proceedings, he received treatment from Dr. G.Venkata Subbaiah, M.S (Ortho), Kadapa. He spent more than Rs.60,000/- on treatment, medicines, attendant and transportation charges. Some of the medical bills are lost when his house was gutted in a fire accident. Inspite of prolonged treatment, the injuries did not heal. He lost movements of right knee. The fractured bones are malunited. He cannot sit and squat and cannot walk without support. He is limping. He became permanently disabled. His right leg became useless; it is like an amputated leg. He has to undergo one major operation, in future; he may have to incur an expenditure of more than Rs.1,50,000/- on medical expenses, in future. The District Medical Board issued exhibit A4, disability certificate."

Be it noted that Dr.G.Venkata Subbaiah, issued exhibit A5, medical certificate, certifying as under: 'PW1 suffered loss of complete movements of right knee; mobility is present at the site of fracture upper 1/3rd of the right leg; that is, non-union of fracture tibia.' In the said certificate, he stated that new X ray taken, on 10.7.2001, disclosed non-union of fracture of right tibia, and mal-union of the lower end of fractured femur (right) (supra-condylar fracture). In the said certificate, he also certified that the claimant suffered disfiguration over forehead and there was loss of supination movement of the right forearm due to fracture of radius and that painful movements of the right wrist were present. He finally assessed the disability at 60% In the cross examination of the claimant (PW1) no points are elicited to discredit his evidence and it was only suggested that the compensation claimed is high and excessive and that as on the date of his evidence his wounds healed and that he became normal and it was further elicited that he filed a few prescriptions. PW1 maintained his stand in the cross-examination and denied the said suggestions. It is common knowledge that even simple injuries cause painful experience to the victim and take a minimum of two to three weeks time for complete healing. Major injuries like fractures take 4 to 6 weeks or 6 to 8 weeks time for total healing, depending upon the nature of fracture and other factors. A further time of one or two months is generally required for physiotherapy and getting normal movements of the limbs. The shock, pain and suffering at the time of accident; pain, discomfort and inconvenience during the period of treatment, hospitalisation, bed rest and physiotherapy can be visualised taking into consideration the day to day human experience. Hence, a total compensation of Rs.1,00,000/- is awarded under the head " 'injury', 'shock', 'pain' and 'suffering'".

7.2 Coming to the compensation to be awarded under the group of heads 'hospital, medical, extra nourishment, attendant's, transport and incidental charges including future expenses', it is to be noted that according to the claimant, he underwent one major operation and he also received treatment from two private practitioners. According to the claimant, he spent more than Rs.60,000/- on treatment and medicines as on the date of his evidence and that he has to undergo one more operation and he may have to spend Rs.1,50,000/- on the operation, which he is required to undergo in future. He filed exhibit A7, a bunch of medical bills and a receipt for Rs.2,000/- issued by Sri Sai Nursing Home of Dr. Subramanya Rao; the total amount covered by bills & receipt under exhibit A7 is Rs.13,890-25 ps. He did not examine any person concerned with the medical bills. He did not even examine the doctor who treated him. He did not file his case sheet or his inpatient & outpatient records. However, the four x rays that were taken revealed that he sustained four major fracture injuries. During the period of hospitalisation, treatment and bed rest one person might have attended upon him and that he might have incurred expenses on his treatment, medicines, attendant, transport and incidental charges cannot be denied. It is common knowledge that even patients receiving treatment in Government Hospital also incur expenditure on attendant, transport, extra nourishment, medicines purchased from outside, besides other incidental charges. In a decision in Managing Director, APSRTC v. Kathavath Gopal and another,[1] this Court held that compensation towards expenditure incurred on extra nourishment and transport cannot be denied even though treatment was given in Government Hospital and one cannot expect positive evidence proving actual expenditure and hence some reasonable hypothesis cannot be ruled out. In the facts and circumstances of the case, a sum of Rs.30,000/- is awardable as compensation under the group of heads 'hospital, medical, extra nourishment, attendant's, transport and incidental charges including future medical expenses for future operation '. The said sum is accordingly awarded.

[1] 2003(5) ALD 198

7.3 Dealing with the claim for compensation under the head 'loss of earnings (past)', it is reasonable to accept that the claimant was out of work at-least for six months. According to his pleadings, he used to do agriculture and earn Rs.4,000/- per month. He was 40 years of age at the relevant time. The Tribunal noted that the evidence discloses that his lands were acquired long before the accident had occurred and that he does not own any lands and hence, determined his annual income at Rs.15,000/- which according to the Tribunal is equivalent to monthly earnings of a casual labourer. This Court is of the considered view that the income of the claimant, a middle aged agriculturist, can be fixed at Rs.3,000/- per month. Therefore, a sum of Rs.18,000/- is awarded as compensation under the head 'loss of earnings (past).'

7.4 Coming to the claim of compensation under the head 'loss of earnings (present & future), the Tribunal accepted the extent of disability as 60% and proceeded to award Rs.1,44,000/-. As rightly pointed out by the learned counsel for the insurance company neither the Doctor who treated the claimant nor a doctor who issued the disability certificate was examined. However, the claimant filed exhibit A4, medical certificate issued by the District Medical Board, and exhibit A5, disability certificate issued by Dr. G.Venkata Subbaiah, wherein the disability was assessed at 60%. The contents of exhibit A5 are already referred to supra while adverting to the testimony of PW1. A perusal of exhibit A4 also discloses that the Doctors of the Medical Board having noted mal-union of supracondylar fracture and grossly restricted movements of right knee joint and painful movements of wrist and other aspects determined the extent of disability at 60%. Further, in Raj Kumar v. Ajay Kumar[2], the Supreme Court, while considering award of compensation for loss of future earnings due to some permanent physical disability, observed as follows:

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[2] (2011) 1 SCC 343

> "Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency)."

Though either a doctor, who issued the disability certificate-A5 or a doctor on the Medical Board, which issued exhibit A4-disability certificate was not examined, yet as the genuineness of the said certificates and the contents thereof are not disputed in the cross-examination and as it is just and fair in the facts & circumstances of the case to accept the extent of disability to an extent of 60% as certified by the District Medical Board, this Court finds that the said percentage of disability can be taken into consideration. The claimant who used to attend to agriculture work would be required to continue to attend to agriculture labour work, which is a hard labour work; the said work requires normal health and physical fitness; the disability suffered certainly presents some difficulty to him in attending to labour work. Hence, it is reasonable to accept that the disability suffered by him impacted his functional capacity and earning capacity. Consequently, the functional disability or loss of earning capacity is determined at 60%. The age of the claimant at the time of accident was 43 years as per the case of the claimant. Therefore, the appropriate multiplier as per the ratio in Sarala Verma v. Delhi Transport Corporation[3] is '14' (fourteen). The monthly income of the claimant was already determined at Rs.3,000/-. Since the claimant is aged 43 years, an addition of 25% to the actual income of the claimant towards future prospects is to be made. Therefore, the monthly income of the claimant works out to Rs.3,750/-. Accordingly, the annual income of the claimant works out to Rs.45,000/- (12 x Rs.3,750/-). The compensation awardable in case of 100% functional disability would be Rs.45,000/- x 14 = Rs.6,30,000/-. Since the functional disability is determined 60%, the said sum, if scaled down comes to Rs.3,78,000/-. The said sum is accordingly awarded under the head 'loss of earnings (present & future)'.

7.5 Coming to the claim for compensation under the group of heads 'loss of prospects of life, loss of amenities of life, loss of enjoyment of life, loss of opportunities of life (economic, political and social), loss of pleasures of life, loss of expectation of life and social disability' and other group of heads, suffice if it is observed that the relevant facts and evidence are already discussed, in detail. The functional disability of the claimant is already determined at 60%. The petitioner has to live with some disability for the rest of his life. Having regard to the facts, the evidence adverted to and the findings recorded supra, in the well considered view of this Court, it is reasonable to award Rs.30,000/- as compensation under the aforementioned group of heads. The said sum is accordingly awarded.

7.6 Accordingly, this Court holds that the claimant is entitled to the following compensation amounts:

[3] 2009 ACJ 1298

Sl. No.	Head of compensation	Amount (in Rs.)
(1)	Injury, shock, pain and suffering	1,00,000-00
(2)	Hospital, medical, extra nourishment, attendant's, transport and incidental charges including future medical expenditure5	30,000-00
(3)	Loss of earnings(past)	18,000-00
(4)	Loss of earnings(present and future)	3,78,000-00
(3)	Loss of amenities of life, loss of expectation of life and social disability	30,000-00
	Total	5,56,000-00

(Rupees Five Lakhs Fifty Six Thousands only)

7.7 In the facts and circumstances of the case, the claimant is not entitled to any other compensation amounts. Thus, as per the determination supra, the just and fair compensation to which the claimant is entitled to is Rs.5,56,000/-. The said compensation is accordingly awarded. The points are accordingly answered.

7.8 Since the Insurance Company did not prefer any appeal assailing its liability to pay the compensation and the only question involved in this appeal is in regard to the quantum of compensation, there are no other issues to be adverted to and decided in this appeal. Therefore, it follows that the respondents 1 and 2 are jointly and severally liable to pay the additional compensation amount awarded to the claimants. The points are accordingly answered.

8. Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award interest at the rate of 7.5% per annum simple on the said enhanced compensation amount.

9. In the result, the appeal is allowed with costs awarding a total compensation of Rs.5,56,000/- (Rupees Five Lakhs Fifty Six Thousands only).

On the compensation already awarded, the trial Court had granted interest at 9%per annum simple. The insurance company is directed to deposit before the Tribunal, within two months from the date of the receipt of a copy of this judgment, the enhanced portion of compensation i.e., Rs.4,02,000/- (Rupees Four Lakhs Two Thousands only) with interest at 7.5% per annum simple from the date of the original petition till the date of deposit. The already awarded compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be deposited accordingly. The claimant shall pay, as per the procedure, the deficit court fee on the difference compensation amount i.e., the amount awarded in excess of the amount claimed. After deposit of the said sums before the Tribunal, the claimant is entitled to receive 40% of the entire deposited amount without furnishing any security. The balance 60% amount of the claimant shall be invested in a fixed deposit in his name in a nationalised bank as per practice and procedure with auto renewal facility till it is released in his favour as per procedure.

Pending miscellaneous petitions, if any, in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

22nd February, 2018
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