

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.150 of 2011

JUDGMENT:

The appellant/claimant, aggrieved by the Award and Decree dated:02.04.2007 in M.V.O.P.No.1084 of 2003, wherein compensation of Rs.5,000/- with interest of 7.5% from the date of petition till deposit with proportionate costs and making both the respondents 1 and 2 jointly and severally liable to pay compensation, preferred this Appeal.

2. The claim, in brief, is as follows:

On 02.08.2003 at about 10.30pm while the appellant/claimant was traveling in Auto Rickshaw No.AP-25-U-604 towards Nizamabad and after crossing Eenadu Office when she reached Dharmaram (B) Village Shivar, Dichpalli Mandal of Nizamabad District, at that time, the driver drove the auto in rash and negligent manner with high speed, dashed against culvert and as a result, auto turned turtle. Because of this, appellant/claimant sustained fracture of right arm, right humerus, fracture of both bones left fore arm, fracture of right clavicle, injuries on head, chest, hands, legs, multiple and grievous injuries on other parts of the body, in the accident.

Immediately, she was shifted to Government Hospital, Nizamabad. Later, she was admitted in Private Nursing Home and underwent several operations. She spent an amount of Rs.1,00,000/- towards medical expenses and still she is getting treatment.

3. After having and considered the pleadings, the Tribunal settled the following issues for trial:

(1). Whether the accident has taken place due to rash and negligent driving of the vehicle Auto Rickshaw No.AP-25-U-604 by its driver?

(2). Whether the petitioner is entitled for compensation, if so, to what just amount and against whom?

(3). To what relief?

4. The claimant herself was examined as PW1 and Dr. Sudheer was examined as PW.2 and got filed Ex.A1-C.C of FIR in Crime No.137/2003 of P.S. Dichpalli, Ex.A.2-C.C of charge sheet, Ex.A.3-C.C of wound certificate, Ex.A.4-xerox copy of driving license of driver of auto, Ex.A.5-Case sheet, Ex.A.6-X-rays(2 in Nos.). Respondent No.2 got examined its Junior Assistant as RW.1 and filed Ex.B.1 policy.

5. The respondents having received notices, failed to appear and advance their arguments.

6. Now, the point that arises for determination is:

Whether the award suffer from any legal infirmities warranting interference in this Appeal?

7. The contention of the appellant/claimant is that the Trial Court having considered the evidence of PW.1 and PW.2 and the Exs.A1 to

A.3 awarded meager compensation of Rs.5,000/- and failed to observe that appellant/claimant sustained fracture of right arm, right humerus, fracture of both bones left fore arm, fracture of right clavicle, injuries on head, chest, hands, legs, multiple and grievous injuries on other parts of the body. Further, the Trial Court failed to consider the expenditure and future earnings and awarded only meager amount towards medical expenses.

8. The claimant herself got examined as PW.1. Her clinching evidence is that while she was traveling in Auto Rickshaw bearing No.AP-25-U-604 towards Nizamabad, the driver of the said auto drove the auto in rash and negligent manner with high speed, dashed against culvert and as a result, auto turned turtle. Because of this, claimant sustained multiple and grievous injuries all over the body. Ex.A.1 is the certified copy of FIR in Crime No.137/2003 of Dichpalli P.S., and Ex.A.2 is the certified copy of charge sheet. On the evidence of PW.1 read with Exs.A1 and A2, one Mr. Middela Yerrana submitted Ex.A1 complaint specifically alleging that, on 2.8.2003, while appellant/claimant and brother-in-law of the complainant along with others were traveling in Auto Rickshaw bearing No.AP-25-U-604, the driver drove the auto in rash and negligent manner with high speed, dashed against culvert and so the said auto turned turtle. The investigating officer also after thorough investigation filed charge sheet against Medida Ravindra Goud, driver of the auto alleging that PW.1 along with others while traveling in auto bearing

No.AP-25-U-604 at about 10.30pm, the driver drove the auto in rash and negligent manner and in the meanwhile a lorry came in opposite direction. In order to avert collision with the said lorry, the driver of the auto took the vehicle towards a concrete heap placed beside the road, resulting which the auto went over the concrete heap and then it turned turtle.

9. The Junior Assistant in Respondent No.2-Insurance Company in Nizamabad Branch was examined as RW.1. He is an eye witness to the accident. His evidence is that the respondent No.1 who was driving auto bearing No.AP-25-U-604, drove the auto in rash and negligent manner and has no valid and effective driving license to drive the transport vehicle. Except that, there is no rebuttal evidence. Having considered the evidence of PW1 and PW2, the Tribunal came to right conclusion that the driver of the auto bearing No.AP-25-U-604 drove the auto in rash and negligent manner, as a result, auto turned turtle. She sustained multiple and grievous injuries all over the body, in the said accident, due to rash and negligent driving of the driver of the auto.

The further contention of the appellant/claimant is that, though she received injuries, fracture of right arm, right humerus, fracture of both bones left fore arm, fracture of right clavicle, injuries on head, chest, hands, legs, multiple and grievous injuries on other parts of the body, the Tribunal only awarded meager amount.

10. The claimant examined herself as PW.1 and Dr. Sudheer was examined as PW.2 who issued Ex.A.3- wound certificate. The evidence of PW.1 is that she sustained fracture of right arm, right humerus, fracture of both bones left fore arm, fracture of right clavicle, injuries on head, chest, hands, legs, multiple and grievous injuries on other parts of the body. Immediately, she was shifted to Government Hospital, Nizamabad, wherein she was treated as in-patient for three days and PW.1 spent Rs.20,000/- towards medical expenses. Due to the above injuries, she is not able to attend to any work and sustained loss of earnings. During the cross-examination, there is a suggestion that PW.1 sustained injuries and recovered fully and there is no disability of any nature and also denied the suggestion that the treatment is given in Government Hospital.

Then, coming to the evidence of PW.2-Doctor who speaks that on 03.8.2003, he examined PW.1 and found that the injuries 1, 2 and 3 are grievous in nature and injuries 4 and 5 are simple in nature. Ex.A.3 is the wound certificate issued by him and Ex.A.5 is the case sheet and Ex.A.6 X-ray (two in Nos.) During the cross examination, he admitted that he did not mention the age of the injury in Ex.A.3-wound certificate. When the case sheet is completely compared with Ex.A.3-wound certificate, apparently there is discrepancy with regard to injuries in Ex.A.5. In Ex.A.5-case sheet, there is a mention that the appellant/claimant sustained abrasion on left wrist and lacerated wound measuring 3x1cms., left elbow. Whereas, in Ex.A.3-wound

certificate, it is mentioned that PW.1 have five injuries. Absolutely, there is no rebuttal evidence to the evidence of PWs.1 and 2 and the injuries mentioned in Ex.A.3. There is also no cross-examination of either PW.1 or PW.2 with regard to the specific injuries mentioned in Ex.A.3. The Tribunal, in spite of evidence of PWs.1 and 2 and documentary evidence under Exs.A3 and A5 without any rebuttal evidence, discarded the evidence of PW.2-Doctor who treated PW.1 and issued Ex.A3-wound certificate which is perverse.

11. The Tribunal only considered Ex.A.5-case sheet and discarded the age of injuries of PW.1 in wound certificate and awarded only Rs.5,000/- and only little amount was awarded for the pain and suffering and also for medical expenses. Though the treatment in Government Hospitals is free of cost, patients used to purchase certain medicines prescribed by the Doctor from outside for which they have to spend huge money for medicines etc.

12. Though PW.1 deposed that she spent Rs.20,000/- towards medicines and there is loss of earnings, she did not file any proof of purchasing medicines from outside. She was in-patient only for three days and there is no convincing evidence particularly evidence of PW.2-Doctor with regard to loss of earnings.

13. The Tribunal only granted Rs.2,000/- for two simple injuries and Rs.1,000/- towards medical expenses, another Rs.1,000/- towards

pain and suffering and further Rs.1,000/- towards transportation and extra nourishment. In all, the Tribunal granted only Rs.5,000/- only. The said award is not according to the standards of suffering of injuries which require modification.

14. The respondent No.2 did not produce any evidence except the evidence of RW.1 with regard to driving license of the auto driver. The claimant herself produced Ex.A4-driving license copy which the driver produced light motor vehicle driving license for driving Auto Rickshaw. At the time of accident, respondent No.1 was driving the said Auto Rickshaw, therefore, the driver was having valid and effective driving license, at the time of accident.

15. In the Appeal, PW.1 has not questioned the findings of the Tribunal. That, at the time of accident, the Auto Rickshaw was overloaded carrying passengers of more than the capacity. Therefore, the respondent No.2 was directed to pay and recover the amount from the respondent No.1.

16. Hence, under the facts and circumstances discussed above, the appellant/petitioner sustained three grievous injuries and two simple injuries in the accident. But the Tribunal awarded for only two simple injuries ie., an amount of Rs.2,000/-. Further, Rs.1,000/- towards medical expenses, another Rs.1,000/- towards pain and suffering and further Rs.1,000/- towards transportation and extra nourishment. In

all, the Tribunal granted only Rs.5,000/- only. The said award is not according to the standards of suffering of injuries which absolutely require modification. Accordingly, I am of the considered view that the appellant / claimant is entitled to Rs.20,000/- for three grievous injuries and an amount of Rs.5,000/- for two simple injuries, which comes to Rs.70,000/-. Besides this, the appellant/claimant is also entitled to Rs.6,000/- towards medicines and Rs.10,000/- towards pain and suffering. In total, appellant/claimant is entitled to compensation of Rs.86,000/-. Accordingly, the Appeal is partly allowed while setting aside the Award and Decree dated:02-04-2007 in M.V.O.P.No.1084 of 2003 of the Motor Accident Claims Tribunal (IV Additional District Judge) (FTC), Nizamabad and is awarded an amount of Rs.86,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization with proportionate costs. Since Policy covered by Ex.B1 is of beneficial legislation, considering the fact that the petitioner is a poor lady, it is ordered that the respondent No.2 shall pay and recover the same from respondent No.1, as if it is a decree.

Miscellaneous Petitions, if any, pending in this Appeal, shall stand closed.

JUSTICE N. BALAYOGI

Dated:15-06-2018

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