

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

C.M.A.No.4761 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 06.07.2004, in M.V.O.P.No.1020 of 2000, passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, (Judge, Fast Track Court), Ranga Reddy District.

2. I have heard the submissions of *Sri C.Vikram Chandra*, learned counsel appearing for the appellant/claimant ('claimant', for brevity), and of *Sri Srinivasa Rao Vutla*, learned counsel for the 2nd respondent/insurance company ('insurance company' for brevity). The 1st respondent is the owner of the offending vehicle. Even though the appeal is dismissed against the 1st respondent, that is, the owner of the offending vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/ or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company, in view of a judgment of a Division Bench of this Court in *Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others*¹.

¹ 2001(1) ALD 453 (DB)

3. At the outset, it is to be noted that the claimant claimed a compensation of Rs.80,000/- for the injuries sustained and the disability suffered due to his involvement in the subject accident. The Tribunal partly allowed the claim petition and awarded a compensation of Rs.30,000/- with interest @ 9% per annum simple from the date of the petition till the date of realization and fastened joint and several liability on the respondents 1 and 2 (insured and the insurer) to pay the awarded amount with interest and proportionate costs to the claimant.

4. The case of the claimant on the relevant aspects may be stated, in brief, as follows: 'He was 39 years of age and was working as a Teacher in Z.P. High School, Manikonda, and was earning a salary of Rs.8,170/- per month as on the date of the accident. On account of his involvement in the subject accident, he sustained grievous injuries including fracture of bones of right hand. On account of the injuries sustained in the accident, his future prospects are badly affected. He was receiving the treatment even as on the date of the institution of the claim petition. He spent Rs.10,000/- on his treatment and medicines. His scooter was completely damaged in the accident. He incurred expenses on purchase of spare parts and repairs of his scooter, which was badly damaged in the accident. Hence he is entitled to a compensation amount of Rs.80,000/- from the respondents 1 and 2, the insured and the insurer.'

5. Per contra, the case of the insurance company is in the nature of general and specific denial. Further, the insurance company put the claimant to strict proof of his age, income, occupation and his entitlement to the amount of compensation claimed.

6 At trial, the claimant was examined as PW1 and exhibits A1 to A6 were marked. No oral evidence was adduced by the insurance company. However, the copy of the policy was marked as exhibit B1. As already noted, on merits and by the award impugned, the Tribunal awarded a compensation of Rs.30,000/- . Therefore, the claimant preferred this civil miscellaneous appeal.

7. Learned counsel for the claimant contended as follows: 'The claimant sustained a crush injury on right ankle and fracture of bones of right fore hand. The said injuries are grievous injuries. The Tribunal, therefore, ought to have awarded a fair amount of compensation under the head 'injury, shock, pain and suffering' and also under the group of heads of 'hospital, medical, extra nourishment, attendant's and transport charges'. The Tribunal awarded a sum of Rs.25,000/- as compensation for the injuries, pain, suffering, mental agony and inconvenience. The Tribunal has not properly appreciated the evidence. The tribunal failed to take note of the fact that immediately after the accident, the claimant, who is employed as a Teacher, first received inpatient treatment for more than a week in a private hospital and later in a Government Hospital, and that he could not attend to his duties and was compelled to avail leave and, therefore, suffered loss of earnings during the period of hospitalization and treatment and that the injuries affected his future prospects. Hence, the Tribunal ought to have awarded reasonable amount of compensation under the head 'loss of earnings'. The Tribunal did not award reasonable, just and fair compensation to which the claimant is entitled to in the facts & circumstances of the

case. Hence, the claim petition may be allowed and the compensation of Rs.80,000/- as claimed may be awarded.'

8. On the other hand, learned counsel for the insurance company contended as follows: 'The claimant sustained two injuries. Therefore, a reasonable compensation of Rs.25,000/- was awarded for the said injuries; and, towards pain & suffering, mental agony, discomfort and inconvenience. A total compensation of Rs.30,000/- was awarded taking into consideration the treatment received for the crush injury and the expenses incurred on medicines and treatment, though no sufficient evidence was adduced. The amount awarded is a just and fair amount. The claimant did not examine the doctor, who treated him and failed to file any inpatient and outpatient records to establish his alleged claims. He did not also produce any leave record and failed to examine his employer or a representative of his employer to prove that he availed leave and thereby suffered loss of earnings. Admittedly, the injuries sustained did not result in any permanent or partial disability and did not impact his earning capacity or his ability to continue to work as a Teacher. Hence, the appeal is devoid of merit and is liable to be dismissed.'

9. I have given earnest consideration to the facts & submissions.

10. 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?

11. POINTS:

11. 1 The claimant as PW1 reiterated his pleaded case on the relevant aspect and exhibited exhibit A2, Discharge ticket; exhibit A3, a pair of medical bill; exhibit A4, bunch of photostat copies of medical bills/ receipts; exhibit A5, bunch of bills for purchase of spare parts; and, exhibit A6, salary certificate.

11.2 The evidence brought on record discloses that he sustained two grievous injuries viz., fracture of bones of right hand and crush injury on the right ankle and that he was first admitted in Vijaya Nursing Home and that he received inpatient treatment for a week and that later he was shifted to Osmania General Hospital and was treated as an inpatient from 25.03.2000 to 31.03.2000. It is in evidence that in Vijaya Nursing Home, Gudimalkapur, debridement was done for the crush injury and that it was sutured by applying fourteen sutures and that the fracture injury sustained on the right hand was conservatively treated by applying POP casing. His discharge ticket, exhibit A2, corroborates his version. 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 or crush injuries take 4 to 6 weeks or 6 to 8 weeks time for total healing depending upon the nature of fracture/ injury and other factors. A further time of one or two months is generally required for physiotherapy and getting normal movements of the limb. 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 compensation

of Rs.45,000/- is awarded under the head “‘injury’, ‘shock’, ‘pain’ and ‘suffering’”.

11.3 As regards the claims under the heads ‘hospital, medical, extra nourishment, attendant’s, transport and incidental charges including future expenses’, this Court has already adverted to the relevant evidence in the preceding paragraph. The claimant received inpatient treatment first in a private hospital and later in Osmania General Hospital. He further received treatment for the crush injury from another private hospital as per his testimony. According to the testimony of PW1 the crush injury was nursed and dressed every alternate day in Srinivasa Hospital, Jeedimetla, and that he paid Rs.100/- to the said hospital on each such visit towards dressing charges and that in all he spent Rs.20,000/- on his treatment, medicines, medical tape/ bandage, dressing and other charges. Exhibit A3 is a pair of medical bills for Rs.2,248/-. Exhibit A4 is a bunch of photostat copies of medical bills issued by Srinivasa Hospital, Jeedimetla. However, as the claimant has not examined the doctor who treated him or a person concerned with the medical bills and that as some of the bills filed are only photostat copies and as the claimant being Z.P. teacher is entitled to reimbursement facility, the Tribunal awarded a further sum of Rs.5,000/- only and no further amounts. As rightly contended by the learned counsel for the claimant, even in cases where there is medical reimbursement facility, it is not possible to claim reimbursement of all medical expenses, particularly the expenses incurred on attendant, transport, extra-nourishment and incidentals. It is also 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,² 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. Hence, it is just and reasonable to award a compensation of Rs.15,000/- under the group of heads 'hospital, medical, extra nourishment, attendant's, transport and incidental charges'. The said sum is accordingly awarded.

11.4 As regards the claim under the head 'loss of earnings (past, present & future)', what is to be noted is that the claimant is employed as a teacher in Z.P. High School, Manikonda. Further, he is earning Rs.8,170/- per month is evident from exhibit A6, salary certificate. No disability certificate is filed. As noted, no doctor is examined. No record is filed to show that the injuries sustained and disability, if any, suffered impacted his earning capacity. In fact, it is not his case that he sustained any disability either partial or permanent. However, the claimant submits that he received inpatient treatment in two spells from two hospitals and that during the period of hospitalization and treatment he availed leave and that, therefore, he suffered loss of earnings. He also submitted that the injuries affected his future prospects. But, neither leave record nor a certificate from his employer is filed to show the period & nature of leave availed and the loss of pay, if any, suffered during the period of hospitalisation and treatment. He is still continuing

² 2003(5) ALD 198

to work as a teacher is not in dispute. Hence no further compensation amounts are awardable either under the head 'loss of earnings (past, present & future)' or any other heads like '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'.

11.5 The claimant also claimed compensation towards the expenses incurred on the repairs of the scooter, which was involved in the accident. Dealing with the claim towards the amounts spent on purchase of spare parts and repairs of the scooter, the Tribunal noted that the claimant did not produce any reliable evidence in respect of this claim and that he is not the registered owner of the scooter involved in the accident and hence, the Tribunal did not award any compensation on this Count. Except reiterating the claim and filing exhibit A5 bunch of bills for spare parts, he did not establish that he is owner of the scooter involved in the accident. Having gone through the material on record and considering his admission that he is not the registered owner of the scooter and on account of his failure to produce any record including the transfer of ownership forms, if any, signed by the registered owner for registration of the scooter in his name in the records of registering authority, this Court finds itself in agreement with the finding of the Tribunal that the claimant is not entitled to any compensation towards the alleged expenditure incurred on the purchase of spare parts and repairs of the scooter involved in the accident.

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

S. No.	Head of compensation	Amount (in Rs.)
(1)	Injury, shock, pain and suffering	45,000-00
(2)	Hospital, medical, extra nourishment, attendant's, transport and incidental charges	15,000-00
Total		60,000-00

(Rupees Sixty Thousands only)

11.7 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.60,000/- . The said compensation is accordingly awarded.

11.8 Since the Insurance Company did not prefer any appeal assailing its liability to pay the compensation and as 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.

12. 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.

13. In the result, the appeal is allowed in part with proportionate costs awarding a total compensation of Rs.60,000/- (Rupees Sixty Thousands only). On the compensation already awarded, the Tribunal 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.30,000/- (Rupees Thirty 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, may also be deposited accordingly. After deposit of the said sums before the Tribunal, the claimant is entitled to withdraw the entire deposited amount without furnishing any security.

Pending miscellaneous petitions, if any, shall stand closed.

23rd February, 2018
RAR



M. SEETHARAMA MURTI, J