

THE HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.2214 of 2009

JUDGMENT:

The appellant/claimant, aggrieved by the award and decree dated:06.11.2006 in M.V.O.P.No.773 of 2005, passed by the learned Chairman, Motor Vehicle Accidents Claims Tribunal-cum-Additional District Judge, Karimnagar, (for short, Tribunal), in awarding compensation of Rs.25,000/- together costs and simple interest at the rate of 6% per annum from the date of petition i.e., 10-10-2005 till the date of realization against respondents 1 to 3 jointly and severally, preferred this appeal.

2. The contention of the appellant is that the Tribunal has not properly appreciated the oral and documentary evidence on record adduced by the appellant and awarded only an amount of Rs.25,000/- against the claim of Rs.2,00,000/- which is very meagre which is against the settled principles of law. The Tribunal erred in not awarding any amounts under the heads (1) permanent disability, (2) transportation, (3) loss of earnings and (4) future operations for removal of screws and awarded simple interest only at the rate of 6% per annum.

3. The claim of the appellant-claimant in brief is as follows:

On 18.1.2005 at about 23.30hours (11.30pm), while he was returning home on TVS Suzuki motor cycle bearing No.AP-1-B-3022 when reached Koyyur outskirts near sub-station , at that time, the driver of lorry (coal tipper) bearing No.AP-12-T 8536 proceeding towards Bhupalpalli from Manthani came in opposite direction with high speed in rash and negligent manner and dashed claimant's motor cycle, as a result, claimant received injuries to his right leg knee and fracture of right patella and on other parts of the body. Immediately, after the accident, he was shifted to B.L.N. Hospital, Godavarikhani after first aid on 18.1.2005. On the very next day, he was admitted as inpatient in Medbone Trauma and Ortho-Care Hospital, Godavarikhani, and after several investigations and medical tests, operation was conducted by the doctor for the fractured wound. The appellant-claimant took treatment as inpatient from 19-1-2005 to 1-2-2005 in the said hospital. After discharge from the hospital, the appellant took treatment on out-patient basis and visited the hospital by engaging private vehicle, as he was not able to walk. Later, he was advised to walk with the help of walker.

4. The appellant-claimant was hale and healthy and was attending to agricultural work and earning Rs.3,000/- per month and the accident made the appellant to suffer as the accident was due to rash and negligent driving of lorry driver.

5. The 3rd respondent filed counter denying the averments made by the appellant-claimant and contended that the accident was result of collision and therefore, the respondents alone cannot be made responsible. The amount claimed is excessive.

6. Basing on the averments of the appellant-claimant and respondents and counter pleadings, the following issues are settled for trial:

(1). Whether the accident had occurred due to rash and negligent driver of the vehicle ie., the bearing lorry (Tipper) No.AP.1 T.8536 by its driver?

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

(3). To what relief?

7. On behalf of appellant-claimant, PWs1 and 2 were examined and Exs.A1 to A9 were marked and on behalf of respondents, no witness are examined, Ex.B1 was marked with consent of respondent No.3.

8. Since the appellant is the claimant is not disputing the finding with regard to rash and negligent driving of respondent No.1. He is only disputing the quantum of compensation awarded and the interest allowed, besides questioning non-awarding compensation

under the heads (1) permanent disability, (2) transportation, (3) loss of earnings and (4) future operations for removal of screws. lorry (coal tipper) bearing No.AP 12 T 8536.

9. The claimant himself is examined as PW.1, besides examining the doctor-PW.2. The averments in the evidence of PW.1 is reliable and trustworthy in support of cross-examination at length. The 3rd respondent did not elicit any favourable material.

10. The evidence of PW.1 is that on 18.1.2005 at 23.30hours, while he was proceeding on his TVS Suzuki motor cycle bearing No.AP-1-B-3022 and reached the outskirts of Koyyur village near sub-station, the driver of lorry (coal tipper) bearing No.AP-12-T 8536 proceeding towards Bhupalpalli from Manthani came in opposite direction with high speed in rash and negligent manner and dashed PW.1 motor cycle. As a result, he fell down and received injuries. Ex.A1 is the FIR submitted by PW.1 himself asserting the same facts by specifically mentioning Crime Vehicle No.AP-12-T 8536. The Investigation Officer, after thorough investigation filed Ex.A2-charge sheet and submitted that the driver SD. Akber Hussain drove the lorry (coal tipper) bearing No.AP-1/T-8536 with high speed in the outskirts of Koyyur village and dashed the PW.1-Perala Sampath Rao who was on TVS Suzuki motor cycle

bearing No.AP-1-B-3022, resulting bleeding injuries to his right leg knee and other parts of his body.

11. The Tribunal having considered the evidence of PW.1 supported by Exs.A1, A2 and A4 (FIR, charge sheet and accident information report) came to right conclusion that the accident was due to rash and negligent driver of the driver of the lorry (coal tipper) bearing No.AP-12/T-8536.

12. The respondent No.3 having taken the plea that the accident was in collision, did not choose to adduce any oral and documentary evidence. Moreover, the respondents 1 and 2 having received notices, were set exparte. The driver of the lorry (coal tipper) is the proper person to speak about the manner in which the accident occurred. It is not the case of the respondent No.3 that the driver (SD Akbar Hussain) is not available or his whereabouts are not known to examine as witness.

13. In the absence of any rebuttal evidence, I am of the considered view that the evidence of PW.1 is supported by Exs.A1 and A2 that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AP-12-T 8536 who came in opposite direction with high speed, dashed claimant's motor cycle bearing No.AP-1-B-3022. As a result, claimant received injuries to

his right leg knee and fracture of right patella and on other parts of the body. Respondent No.3 failed to establish any collision or negligence on the part of PW.1. Accordingly, the finding of the Tribunal that the accident was due to rash and negligent driving of the lorry driver (coal tipper) bearing No.AP-12-T-8536 is legal, do not suffer from legal infirmities warranting interference.

14. The contention of the appellant-claimant is that in the accident, he sustained grievous injuries and became permanent disabled person. Admittedly, the appellant/petitioner has not taken any disability particularly permanent disability in the claim petition. Now, for the first time, in the grounds of appeal, he stated that the Tribunal erred in not awarding any amount under the head of permanent disability. The averments of PW1 is that due to the injuries he sustained in the accident, he cannot sit, squat or walk properly and developed limping, due to which he received permanent disability. PW.2 is the doctor to speak about nature of injuries. That, on 18-1-2005, PW1 was admitted in Surya Hospital, Godavarikhani. Ex.A3 is the medical certificate issued by Dr. B. Vijaya Bhaskar, M.S. Orthopaedician. According to which, PW.1 sustained injuries and fracture patella of right knee, which is grievous in nature.

15. The further evidence of PW.1 is that, he was shifted to Medbone Hospital for surgery on 19-1-2005 for open reduction and internal fixation with screw and discharged on 01.2.2005. He was advised for complete bed rest for three months and rest for six months and he was further advised regular follow-up for one year. Ex.A3 go to suggest that he sustained injury over right knee which is simple and fracture – right patella which is grievous in nature. Ex.A5 is the discharge card issued by the hospital (Medbone Trauma and Ortho Care)-PW.2 wherein it is specifically mentioned that PW.1 was admitted in the said hospital on 19.1.2005 and discharged on 01.2.2005 and underwent surgery on 19.1.2005. Ex.A6 are the medical bills. Ex.A7 is the transport charges. PW.2 corroborated Exs.A3, A6 and A7 issued by the hospital. A perusal of Claim Petition go to suggest that there is no plea of disability in the entire petition and PW.1 also for the first time in the Court submits that that he is unable to walk, sit and suffer from permanent disability. PW.2 stated that the said disability is 10 to 15% and PW1 has to undergo another surgery for removal of screws. Disability by PW.2 is not supported by any documentary evidence. The Tribunal in the light of the evidence discussed above came to conclusion that the appellant/petitioner was not able to move. Obviously, during the said period, cannot have earnings. Ex.A8 shows that he got agricultural lands, cultivating by himself. Therefore, his stay at home cannot be taken as

consideration of loss of income. Further, loss of earnings can be on month to month basis. Under these circumstances, the claim of loss of earnings/income cannot be awarded to the appellant/petitioner. The appellant/petitioner in the Claim Petition claimed an amount of Rs.20,000/- towards loss of earning which was rejected by the Tribunal.

16. The further evidence of PW.1 is that he spent Rs.10,000/- towards extra nourishment. Hence, having considered the said fact, the Tribunal held that the appellant/petitioner has undergone operation and was hospitalized for a period of fifteen days, considering the circumstances, it is just and proper to grant an amount of Rs.1,000/- towards extra nourishment, though no bills are produced. But granting of Rs.1000/- towards extra nourishment is very meagre because the evidence of PW.2 corroborate with Ex.A5-discharge card which go to show that he was admitted in hospital on 19.1.2005 and discharged on 01.2.2005. He was in the hospital for thirteen days, who underwent surgery on 19.1.2005 for fracture – right patella and the doctor bed rest for three months and rest for six months and in total, nine months rest. But the Tribunal has not granted any amount towards loss of earnings because he was in the hospital for thirteen days and advised three months bed rest and another six months rest, in total-nine months rest, during which period the

appellant/petitioner certainly sustained loss of earnings for which he is entitled. But the Tribunal erroneously rejected the same. Further, as already discussed above, the amount of Rs.1,000/- granted towards extra nourishment for a person who is admitted in the hospital for thirteen days with an advise of three months bed rest and six months rest and after discharge from the hospital, he has taken treatment. Therefore, awarding an amount of Rs.1,000/- towards extra nourishment is very meagre which also require modification.

17. Further, towards medical expenses and for treatment, appellant / petitioner claims Rs.50,000/-. Ex.A5-discharge card show that PW.1 was admitted in the hospital and underwent treatment and surgery on 19.1.2005. Ex.A6 are the medical bills for treatment which amount comes to Rs.18,370, which amount is rounded to Rs.18,000/-. For the said amount, the appellant/petitioner is fully entitled for medical expenses.

18. Further, Ex.A7 consists of nine receipts towards transportation for Rs.9,600/-. It is the evidence of PW.1 that after discharge, he took treatment. PW.2 also corroborate that PW.1 was advised bed rest for three months and six months rest and he was also advised follow-up treatment after one year. PW.1 has to undergo another surgery which will cost about Rs.10,000/- to Rs.12,000/-. Since

PW.1 sustained injuries and fracture – right patella, he cannot walk particularly when he filed Ex.A7-nine receipts. (1) This receipt is issued by TATA SUMO No.AP36V 2121, for Rs.1,200/- to go to hospital on 19.1.2005 on which date he was admitted in Medbone Trauma and Ortho Care, Godavarikhani. (2). For the Car No.AP15 W 5998 the amount is Rs.1,100/- dated:01-2-2005,. (3). For TATA SUMO No.AP-36V-2121, dated:7-2-2005, the amount is Rs.1,400/-. (4). For TATA SUMO No.AP-36V-2121, dated:26.2.2005, the amount is Rs.1,400/-. (5) For Car No.AP-04-V-4223, dated:3-3-2005, the amount is Rs.900/-. (6) For Jeep No.AP-04-V-4223, dated:16-3-2005, the amount is Rs.900/-. (7) For Jeep No.AP-04-V-4223, dated:24-3-2005, the amount is Rs.900/-. (8). For Jeep No.AP-04-V.4223, dated:4-4-2005, the amount is Rs.900/- and (9). For Jeep No.AP.04.V-4223, dated:21.4.2005, the amount is Rs.900/-. These vehicles were engaged to go to Medbone Trauma and Ortho Care Hospital, Godavarikhani. Even though under Ex.A7-nine receipts for Rs.9,600/-, the same amount was rejected by the Tribunal stating that PW.2 advised PW.1 to take bed rest for three months. Therefore, the question of appellant / petitioner going to hospital on many occasions on a vehicle does not arise which is falsified since while discharging him from the hospital, doctors advised follow-up due to injuries on different dates and duly filing nine receipts under Ex.A7 for transportation charges was rejected. Even

in the absence of rebuttal evidence is perverse and the appellant/petitioner is entitled for the same.

19. Further, appellant/petitioner also claimed an amount of Rs.10,000/- towards compensation for pain and suffering. But the Tribunal awarded Rs.1,000/- for simple injury and Rs.5,000/- for grievous injury, towards pain and suffering. Thus, in total awarded Rs.6,000/-. When PW.1 underwent surgery for fracture-right patella and after discharge from the hospital, he was advised bed rest for 3 months and another rest for six months, in total-nine months rest, awarding Rs.6000/- towards pain and suffering is also meagre which also require modification.

20. The appellant/petitioner also claimed towards loss of earnings. As already stated by PW.2 that there is about 10% to 15% disability, but there is no justification for the disability stated by PW.2. PW.2 stated that some amount of stiffness will prevail. It is, but natural, for any injury and a subsequent treatment to develop some amount of stiffness and causing some dis-comfort for some period, but it cannot be permanent disability. Therefore, the disability as stated by PW.2 cannot be accepted. Hence, there can no loss of earning capacity. So far as disability is concerned, it is not proper on the part of the Tribunal to reject loss of earnings. As per Ex.A5, he was in hospital from 19.1.2005 and discharged on

01.2.2005. Accordingly, he was in the hospital for 13 days for his treatment. He was advised by PW.2 to take bed rest for three months and rest for six months. Accordingly, he was on rest for complete nine months for which he is entitled towards loss of earnings. But the Tribunal erroneously rejected towards loss of earnings.

21. Ex.A8 is the land value certificate. According to which the total land is to the extent of Ac.7.22Gts. The appellant/petitioner did not examine any witness concerned with Ex.A8.

22. With regard to compensation, the Tribunal considered Ex.B1-copy of policy issued by respondent No.3 which is marked with consent. Respondent No.2 being the owner of the vehicle and being the employer of respondent No.1 is vicariously liable for the acts of respondent No.1 and respondent No.3 being the insurance company having insured the vehicle are bound to indemnify respondent No.2. Therefore, found that all the respondents are jointly and severally liable to pay the compensation.

23. In the facts and circumstances discussed above and the evidence therein, I find as rightly contended by the appellant/claimant that allowed Rs.5,000/- for grievous injury and Rs.1,000/- for simple injury and it is not at all just compensation.

Besides that, allowed Rs.1,000/- towards extra nourishment in spite of PW.1 established that he was in the hospital as in-patient from 19.1.2005 to 01.2.2005 and thereafter the doctor advised bed rest for three months and rest for six months, in total-nine months rest. But the Tribunal awarded Rs.1,000/- towards extra nourishment. However, in my view, it can be enhanced to Rs.6,000/- towards extra nourishment, which will meet the ends. Besides this, the Tribunal awarded Rs.18,370/- which was rounded to Rs.18,000/- which is not correct. Therefore, the appellant/petitioner is entitled to Rs.18,370/- towards medical expenses. Further, the Tribunal rejected compensation of Rs.9,600/- towards transportation. Thus, the amount of Rs.9,600/- is proved by Ex.A7-nine receipts of vehicles, corroborated with PW.1 evidence. Accordingly, the same amount of Rs.9,600/- is awarded towards transportation. Further, the claim towards pain and suffering is Rs.10,000/-. But the Tribunal awarded only Rs.6,000/- under two heads which is also meagre and require modification. Accordingly, Rs.8,000/- is awarded towards pain and suffering.

24. Further, with regard to consideration of cultivation of land, appellant/petitioner filed Ex.A8-Land valuation certificate. The appellant/petitioner did not examine any witness concerned with Ex.A8 to prove it.

25. While assessing income, attendant circumstances have to be considered. In the light of what has been discussed about just compensation, the income cannot be estimated without any material. To justify the estimation, the Honourable Supreme Court, in the case of State of Haryana and another V. Jasbir Kaur and Others¹ held that as under:

“Learned counsel for the appellants submitted that with practically no evidence the Tribunal and the High Court proceeded to award Rs.6.5 lakhs. There was not even an iota of evidence to substantiate the claim of agricultural income from about 4 acres of land and there was no evidence that the deceased was having any income from sale of milk or cattle. The High Court having accepted that there was no material to show that the deceased had any income from sale of cattle or milk came to an abrupt and presumptuous conclusion that monthly income was Rs.4500/-. There was no material to show as to what was the type of land, annual yield, if any, and therefore, the award is not sustainable in law, and the High Court erred in dismissing the appeal. Per contra, learned counsel for the claimants submitted that the High Court has gone by the probabilities and the realities of life. Even if it is accepted that there was no material to show the income from the agricultural or dairy, a rational view can be taken about the possible income from the agricultural land, which the Tribunal did and the High Court give its seal of approval.

Gauzing the relevant aspects, noted above, the monthly income is fixed at Rs.3000/- per month, and after deducting Rs.1,000/- for personal expenses, financial contribution so far as the claimants are concerned is fixed at Rs.2,000/- per month.”

Thus, as per the above decision, in the case of State of Haryana and another V. Jasbir Kaur and Others, there will be no loss in cultivation.

¹ (2003) 7 SUPREME COURT CASES 484

26. As already discussed above, the Tribunal only awarded Rs.5,000/- to grievous injury and Rs.1,000/- towards simple injury which is very meagre. Having considering the nature of injuries spoken by PW.2 corroborated with Ex.A3 and mentioned in Ex.A5- discharge card and nature of injury for which he underwent surgery on 19-1-2005, I am of the considered opinion that awarding an amount of Rs.30,000/- will meet the ends of justice and for fracture injuries—simple injury- Rs.3,000/- is awarded and in total, the appellant/petitioner is entitled to Rs.33,000/- towards injuries. Since the petitioner is an agriculturist and in spite of having Ac.7.22 land is now in the name of his father, therefore, taking into consideration the present costs of land and the labour charges, I consider it monthly income as Rs.3,000/- for nine months rest period which comes to $3,000/- \times 9 = \text{Rs.}27,000/-$ (for nine months salary) and Rs.8,000/- for future operation and medicines and for removal of screws.

27. Hence, in view of the findings discussed above, I am of the considered view that the Tribunal was right in holding that the accident occurred due to rash and negligent driving of the driver of lorry (coal tipper) bearing No.AP-12-T 8536 and respondent No.3 failed to establish any collision. In the accident, the appellant/petitioner sustained injuries to his right leg knee and fracture of right patella and on other parts of the body. He was

hospitalised from 19.1.2005 to 01-2-2005 for a period of 13 days and he underwent surgery on 19.1.2005. For removal of screws, appellant/petitioner has to undergo another operation in future and there is loss of income for the nine months rest period for which he is entitled to loss of earnings. Appellant/petitioner also incurred expenditure towards transportation (to and fro from the hospital to his village) which is proved under Ex.A7. Ex.A6 are the medical bills for which the appellant/petitioner is entitled to pain and suffering. Accordingly, appellant/petitioner is awarded an amount of Rs.1,03,970/-.

28. Thus, in total the appellant / claimant is entitled to receive the compensation as below.

Towards medical expenses	-	Rs. 18,370/-
Towards transportation	-	Rs. 9,600/-
Towards pain and suffering	-	Rs. 8,000/-
Towards injuries	-	Rs. 33,000/-
Towards nine months salary	-	Rs. 27,000/-
Towards future operation & medicines and for removal of screws	-	Rs. 8,000/-
Total compensation	-	<u>Rs. 1,03,970/-</u>

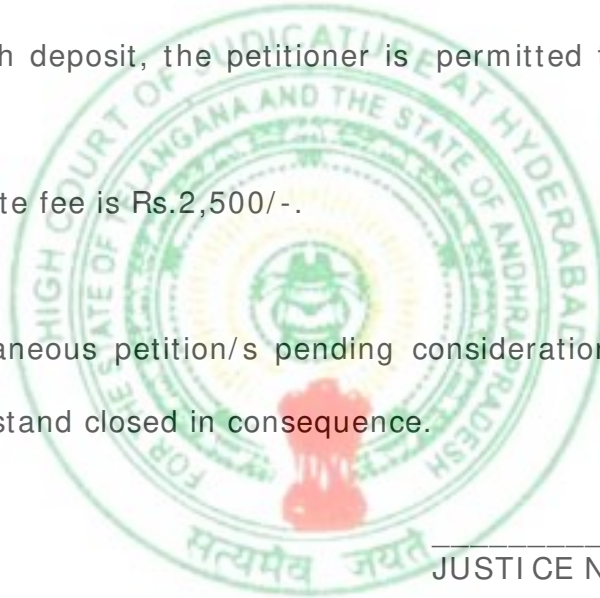
29. In the result, the appeal is partly allowed with proportionate costs by modifying the award and decree dated:06.11.2006 in M.V.O.P.No.773 of 2005, passed by the learned Chairman, Motor

Vehicle Accidents Claims Tribunal-cum- Additional District Judge, Karimnagar, to the extent indicated hereinabove. Consequently, the respondents 1 to 3 are directed to deposit the total compensation of Rs.1,03,970/- together with interest at 7.5% per annum, 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.

30. On such deposit, the petitioner is permitted to withdraw the same.

31. Advocate fee is Rs.2,500/-.

32. Miscellaneous petition/s pending consideration, if any in the appeal shall stand closed in consequence.



JUSTICE N.BALAYOGI

Dated: 25-01-2018

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THE HONOURABLE SRI JUSTICE N. BALAYOGI



M.A.C.M.A. No.2214 of 2009

DATED: 25-1-2018

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