HONOURABLE SRI JUSTICE N. BALAYOGI

MACMA No. 1119 OF 2006

JUDGMENT:

1. The appellant/claimant, aggrieved by the quantum of compensation awarded in OP.No.498 of 2004 dated 10.08.2005 on the file of Chairman, Motor Vehicle Accident Claims Tribunal-cum-IV Additional District Judge, (FTC), Karimnagar, the present appeal is preferred.

2. The claim of the appellant/claimant is that on 12.11.2003 while she was travelling in the auto bearing No. AP 15V 7962 in order to go to Eglaspur village and when the said auto reached near the petrol bunk at Manthani at about 8.30 AM, the driver of the said auto, first respondent herein, drove it in rash and negligent manner, with high speed, thereby he lost control over the auto and the auto turned turtle, as a result of which, the appellant/claimant fell down and sustained fracture injury on right femur, fracture injury on left leg and two abrasion injuries.

Immediately she was shifted to Government Hospital, Manthani, whereat she was treated as inpatient on 12.11.2003 and 13.11.2003 and thereafter she was referred to Government Hospital, Karimnagar wherein she was treated from 13.11.2003 to 13.12.2003 as inpatient and undergone surgery for both fractures and steel rods were inserted. While discharging, she was advised complete bed rest and also to follow up periodical treatment. Due to the fracture injuries, she was unable to walk properly without the support of stick and insertion of steel rods. First respondent being the owner cum driver of the offending auto and Respondents 2 and 3 being the insurer are joint and severally liable to pay the compensation.

3. Before the Tribunal, the first respondent remained *ex parte*. Third respondent filed counter and contended that there was no valid driving license for the first respondent to drive the said auto at the time of accident and that the claim made by the appellant/claimant is excessive and exorbitant.

4. Basing on the pleadings, the Tribunal framed the following issues for settlement.

1. Whether the accident had occurred on negligent driving of the vehicle i.e. auto bearing No.AP 15V 7962 by its driver ?
2. Whether the vehicle in question has got valid insurance as on the date of accident ?
3. Whether the petitioner is entitled to compensation, if so, to what amount and from whom ?
4. To what relief ?

5. In order to prove the claim, the claimant was examined as P.W.1 and also examined P.W.2 and got marked Exs.A.1 to A.6 on her behalf. No oral or documentary evidence was adduced on behalf of the respondents, except marking Ex.B.1 copy of insurance policy on their behalf.

6. The contention of the appellant/claimant is that the Tribunal erred in rejecting Ex.A.6 medical bills amounting to Rs.25,600/-. Further contended that in the absence of rebuttal evidence, the finding of the Tribunal that the auto was carrying eight persons at the time of accident basing on the averment made in Ex.A.2 Charge Sheet, is erroneous and that the claimant is entitled to full amount of compensation as claimed for.

Per contra, it is contended by the learned Standing Counsel for the respondents-Insurance Company that the Tribunal after elaborate consideration of the evidence on record rejected the medical bills as they are not supported by the evidence of P.W.2 and that the amount awarded by the Tribunal is reasonable and does not warrant interference by this Court.

7. Since it is an appeal preferred by the appellant/claimant for enhancement of compensation and there being no cross appeal by the Insurance Company, the findings of the Insurance Company with regard to rash and negligent driving on the part of the first respondent need not be gone into.

8. The consistent evidence of P.W.1/claimant is that at about 8.30 a.m. while she was travelling in the auto bearing No. AP 15V 7962, the driver, the first respondent herein, drove the said auto in rash and negligent manner with high speed at Petrol Bunk, Manthani, due to which, the auto turned turtle and she fell down from the auto and sustained injuries. Immediately a

complaint was lodged with the police, who registered the same as Crime No.148 of 2003 on 12.11.2003. With regard to the accident occurred at 8.30 AM, there is specific assertion that the driver drove the auto with high speed, in rash and negligent manner, due to which, the said auto turned turtle. The Investigating Officer after thorough investigation, filed final report vide Ex.A.2 wherein it was specifically asserted that the driver of the auto bearing No. AP 15V 7962, when it reached near petrol bunk, Manthani, drove the same in rash and negligent manner, with high speed and lost the control, due to which, P.W.1 sustained grievous injuries.

9. The Tribunal after thorough consideration of the evidence of P.W.1 supported by documentary evidence at Exs.A.1,A.2 and A.4 rightly came to the conclusion that the accident occurred due to rash and negligent driving of the driver of offending auto. This finding being legal and proper do not warrant interference.

10. With regard to the injuries, there is evidence of P.W.1. She specifically deposed that immediately after the accident, she was shifted to Government Hospital, Manthani which issued Ex.A.3 Wound Certificate. She was in the hospital at Manthani on 12.11.2003 and 13.11.2003. Thereafter she was referred to Government Hospital, Karimangar, wherein she was admitted as in patient and took treatment from 13.11.2003 to 13.12.2003, i.e. for thirty days.

11. The clinching evidence of P.W.1 is that she sustained injuries to both the legs i.e. fracture of right femur, fracture to left leg besides abrasion to right knee and abrasion to left supra scapular. She undergone surgery and steel rods were inserted in both the legs.

12. P.W.2 the doctor who treated P.W.1 in the Government Hospital, at Karimangar deposed that she was operated for fracture shaft right femur and compound fracture of both bones left leg. His evidence is supported by Ex.A.3 Wound Certificate and Ex.A.5 OP chit.

13. The consistent evidence of P.W.2 is that P.W.1 was admitted in the Government Hospital, Karimangar on 12.11.2003 and discharged on 13.12.2003. She was operated for fracture shaft right femur and compound fracture both bones left leg and IM nailing for right femur and external fixator for left leg. While discharging from hospital, she was advised to attend Orthopedic OP after one month and she was prescribed medicines for one month. She was also advised not to bear weight for three months. It is the evidence of PW.2 that implants were purchased by PW.1 herself from outside. During the cross examination, nothing adverse was eilicted.

14. The evidence of PW.1 is corroborated by the evidence of PW.2 doctor who is the proper person to speak about

the nature of injuries sustained by P.W.1., that P.W.1 sustained fracture injury to her right femur, fracture injury to her left leg, abrasion injury to her right knee and abrasion injury to her left supra scapular. Ex.A.3 is the wound certificate wherein it is specifically stated that the appellant/claimant sustained fracture of right femur, fracture to left leg besides abrasion to right knee and abrasion to left supra scapular.

15. The appellant/claimant filed bunch of medical bills vide Ex.A.6 showing expenditure incurred towards purchase of medicines worth of Rs.25,600/-. However, the Tribunal awarded only Rs.4,000/- on the ground that the appellant/claimant purchased medicines at Warangal whereas he took treatment at Govt. Hospital, at Karimangar. The Tribunal having found that the evidence of P.Ws.1 and 2 corroborated by Exs.A.3 and A.5 establish that the appellant/claimant suffered fracture of right femur, fracture to left leg which are grievous in nature, besides abrasion to right knee and abrasion to left supra scapular, which are simple in nature, ought to awarded the compensation claimed towards medicines. Further a reading of evidence of P.W.2 has clinchingly proved that P.W.1 was inpatient from 13.11.2003 to 13.12.2003 for a period of thirty days. At the time of discharge, P.W.1 was advised to attend Orthopedic OP after one month and she was prescribed medicines for one month and also advised not to bear weight for three month. P.W.2 deposed in his evidence that P.W.1 purchased implants from outside. There is no rebuttal

evidence from the side of respondents disputing the purchase of medicines by the appellant/claimant nor any suggestion was put to in his cross examination. Though there is no rebuttal evidence to the evidence of P.W.1 and Ex.A.6 the Tribunal bluntly rejected on the ground that the petitioner took treatment at one place and purchased the medicines at some other place. The prescription under Ex.A.5 shows that the doctor prescribed medicines for six months and P.W.2 also advised her for follow up treatment while discharging from hospital. Therefore, in the absence of rebuttal evidence from the side of respondents, more particularly in the absence of cross examination of P.W.2 by the respondents, the Tribunal ought to have awarded the compensation admitting A.6 medical bills.

16. In view of the foregoing discussion, , I am of the considered view that it is just and proper to award Rs.20,000/- each towards two grievous injuries, i.e. 50,000/-, Rs.10,000/- towards future operation for removal of the steel rods, Rs.4000/- each towards two simple injuries, i.e. Rs.8000/-, Rs.25,600/- towards purchase of medicines by PW.1 under Ex.A.6 and Rs.7000/- towards pain and suffering. Since there is no dispute in awarding compensation towards of loss of earnings at Rs.3,600/- and Rs.5,000/- towards extra nourishment, the same are upheld. Thus, in all, the appellant/claimant is entitle to receive total compensation of Rs.99,600/, which is rounded to Rs.1,00,000/-.

17. Ex.B.1 is the Insurance policy which was in the name of first respondent who was the owner-cum-driver of crime auto and the same was valid from 25.6.2003 to 24.6.2004; whereas the accident occurred on 12.11.2003; as such, the policy was in force as on the date of accident. The Insurance Company neither enter into the witness box nor adduce any evidence contending that the driver-cum-owner of the auto violated the terms and conditions of the police. By virtue of the Ex.B.1 policy which was in force as on the date of accident, the Insurance Company and driver-cum-owner of the crime auto, respondents herein, are jointly and severally liable to pay the compensation awarded hereinabove.

18. Accordingly the appeal is allowed with proportionate costs while modifying the Award and decree in OP.No.498 of 2004, dated 10.08.2005 on the file of Chairman, Motor Vehicle Accident Claims Tribunal-cum-IV Additional District Judge, (FTC), Karimnagar to the extent indicated hereinabove.

19. The respondents are directed to deposit the compensation amount of Rs.1,00,000/- awarded hereinabove with interest at 9% per annum from the date of petition i.e. 26.6.2004 till the date of realization, deducting the amount if any already paid/deposited, within thirty days from the date of receipt of a copy of this judgment

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20. On such deposit being made, the appellant/claimant is permitted to withdraw the said amount.

21. Advocate fee is Rs.2,000/-.

22. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 1st November, 2018.
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