

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.2512 of 2009

JUDGMENT :

The appellants/respondents, aggrieved by the award and decree dated 04.06.2007 in O.P.No. 359 of 2002, passed by the learned Chairman, Motor Accident Claims Tribunal (District Judge) Nizamabad, preferred this appeal, mainly contending that the Tribunal ought to have taken into consideration that there is no documentary evidence produced on behalf of the respondent showing that he was earning Rs.10,000/- per month as per his statement or even Rs.3,000/- per month as fixed by the Tribunal to arrive at a just conclusion; the Tribunal ought to have deducted 1/3rd of the income out of loss of income fixed by the court, towards the expenses and the Tribunal ought to have taken into consideration that the respondent has not submitted any disability certificate even though stated that he sustained 50% disability. Further, it is contended that awarding Rs.1,00,000/- towards disability is highly exorbitant and imaginary without there being any disability certificate to that effect and the Tribunal ought to have considered the evidence of R.W.1.

2. The 1st respondent in O.P.No.359/2002 filed written statement contending that the accident occurred due to the fault of the petitioner, who rode the motor cycle at high speed while over taking the jeep. The driver of the jeep was having valid driving licence and working

as a driver for the last 20 years and well acquainted with driving the vehicles. It is further contended that the claim of the petitioner is very exorbitant and excessive.

3. The averments in the petition, in brief, are as follows:

On 30.11.2001, while the respondent/petitioner was riding Hero Honda Motor cycle bearing No. AP-25/G 3389, from Armoor towards Hyderabad very slowly and cautiously on the side of the road, one Sandhya was travelling on the bike as a pillion rider, at about 11.45 A.M., when they reached Ramarajnagar colony, Jeedimetla Village outskirts on Nagpur to Hyderabad road, High way No.7, at the same time, the driver of the jeep bearing No. AP-F-5797 drove the jeep with high speed in rash and negligent manner came in opposite direction on wrong side of the road and dashed the respondent/petitioner's motor cycle, due to which, the respondent/petitioner and Sandhya and the bike fell down and the front wheel of the jeep run over them, resulting which the petitioner received comminuted and multiple fractures to both legs, fracture injuries to both hands, skull, injuries on face, head and other parts of the body, his face also disfigured. Immediately, he was referred to Gandhi Hospital, Secunderabad, thereafter shifted to Apollo Hospital, Hyderabad where he was treated by a team of doctors, and he underwent operations 6 times, rods are inserted, his motor cycle was completely damaged to a tune of Rs.40,000/- and that he incurred Rs.5 lakhs for his treatment.

4. Due to injuries, he is unable to move from the bed, he cannot walk and work and his life became dark and miserable. He became dependent on others and got permanent disability and requires further operations. The accident took place due to the rash and negligent driving of driver of the jeep bearing No. AP-F-5797 belonging to the respondents 1 and 2. Therefore, respondents 1 and 2 are jointly and severally liable to pay compensation.

5. Heard the learned counsel for the petitioners/ respondents and learned counsel for the respondents

6. The Tribunal, having considered the pleadings of both parties, settled the following issues for trial :

- 1) *Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No. AP-F-5797 by its driver?*
- 2) *Whether the petitioner is entitled for compensation ? If so to what just amount and against whom?*
- 3) *To what relief ?*

7. On behalf of the petitioner, P.W.s 1 to 4 were examined and Ex.A1 - F.I.R., Ex.A2-charge sheet, Ex.A3-wound certificate, Ex.A4- Discharge summary, Ex.A5-Discharge summary, dated 03.01.2002, Ex.A6-discharge summary, dated 19.09.2003, Ex.A7- Pathological reports (4), Ex.A8-Prescriptions (5), Ex.A9- Medical bills and receipts (97), Ex.A10- Photographs of the petitioner, Ex.A12 - X-ray films (7) and Ex.A13-Xeros copy of R.C. Book were got marked. On behalf of

respondents, R.Ws.1 and 2 were examined and no documentary evidence was adduced.

8. Now the point that arises for determination is :

“whether the Tribunal erred in assessing the income at Rs.3,000/- per month and in not deducting 1/3rd towards his maintenance and also in awarding Rs.1,00,000/- towards disability, as such the findings of the Tribunal are suffering from legal infirmities warranting interference in the appeal.”

9. The learned counsel for appellants contended that at the time of accident R.W.1 was proceeding very slowly and cautiously on left side of the road, but it is the claimant who came in rash and negligent manner and dashed the jeep.

10. On the other hand, the respondent/claimant contended that the Tribunal well found the rash and negligence on the part of the jeep driver, which is legal and valid. The claimant himself is examined as P.W.1, besides examining P.W.4 – the complainant. The evidence of P.Ws.1 and 4 is consistent and corroborative that on 30.11.2001 while P.W.1 as a rider of the motorcycle bearing No.AP 25 G 3389, whereas his wife Sandhya as pillion rider, were proceeding from Armoor to Hyderabad and when they reached Ramarajnagar Colony, Jeedimetla village, the jeep bearing No.AP F 5797 belongs to the Government came in opposite direction with high speed on the wrong side of the road and dashed the motorcycle. P.W.4 himself is an eyewitness to the accident and presented Ex.A1 complaint to the police and he was cited as first witness in the charge-sheet under Ex.A2. His presence at the accident

spot on 30.11.2001 at 11.45 AM was certain because his evidence inspired confidence that at that time he was going from Medchal to Secunderabad on his motorcycle bearing No.AP 10 3041, whereas P.W.1 along with his wife were proceeding on another motorcycle bearing No.AP 25 G 3389 from Armoor towards Hyderabad and when reached Ramarajnagar Colony, Jeedimetla village, the jeep bearing No.AP F 5797 came from opposite direction with high speed in a rash and negligent manner on wrong side of the road and dashed the motorcycle. In Ex.A1 there is a clear assertion that the driver of the jeep bearing No.AP F 5797 drove the vehicle in a rash and negligent manner on NH 7 and while proceeding towards Medchal side from Secunderabad, dashed the Hero Honda motorcycle bearing No.AP 25 G 3389 near Ramarajnagar Colony, Jeedimetla Village. In Ex.A2 – Charge-sheet as already discussed P.W.4 is cited as first witness and complainant and after thorough investigation charge-sheet was filed finding that the accident was due to rash and negligent driving of the jeep bearing No.AP F 5797.

11. Though in the counter as well as in the deposition of R.W.1 who is the driver of the offending vehicle bearing No.AP F 5797 it is deposed that on 30.11.2001 while R.W.1 was driving the jeep from Hyderabad towards Medchal to attend the duty along with his officials and when reached near Ramarajnagar Colony, at Suchitra factory some persons gathered and he stopped the jeep and found one lorry was parked and two persons found with injuries and they also saw that one hero Honda dashed against the parked lorry, due to which both persons sustained injuries, after that he went to the office along with officials in

the said jeep and his jeep did not involve in any accident. In the grounds of appeal he took a contrary defence stating that the Tribunal ought to have taken into consideration the evidence of R.W.1 who is the driver of the jeep to the effect that he was driving the vehicle very slowly and consciously on the left side and the respondent himself came in rash and negligent manner and dashed the jeep. This plea is contrary to the plea in the counter and also the evidence of R.W.1 further contradict the evidence of R.W.2 who is a Senior Assistant in appellants' office. The respondents though not took the plea in the written statement that the jeep is not involved in the accident and petitioner dashed against the stationed lorry, but have led in evidence through R.Ws.1 and 2 to that effect.

12. The evidence of R.Ws.1 and 2 is that the jeep bearing No.AP F 5797 is not at all involved in the accident, but on close scrutiny of their evidence which shows the evidence is inconsistent and contrary to each other.

13. The evidence of R.W.1 is that one Balaiah, MDO was travelling in the jeep at the time of accident and they were returning from Hyderabad after attending a meeting, but the evidence of R.W.2 is completely contrary to R.W.1, wherein he deposed that the jeep went for repairs and R.W.1 alone was returning in the jeep from Secunderabad. The suggestion to R.W.1, which is denied, is that on 6.12.2001 he was surrendered in the Police Station and released on bail. His own evidence is that nine months after the alleged incident he was arrested. Ex.A2 is

the charge-sheet basing on which a case was registered in the Court and pending for trial, wherein there is a specific finding of the Investigating Officer that on 6.12.2001 R.W.1 surrendered in the police station and R.W.1 was arrested and released on bail. The documentary evidence well prevailed over the accident. There is no suggestion to Investigating Officer about filing of a false R.C. If indeed the jeep is not involved in the accident, there is no necessity for R.W.1 to go to the police station and surrender himself and get bail. Their evidence also do not show the number of the alleged stationed lorry, therefore, the evidence of R.Ws.1 and 2 is inconsistent, contrary to each other and do not inspire any confidence. The plea of the respondents in the written statement is that the accident occurred due to the negligence of the petitioner as the petitioner himself negligently drove the motorcycle and dashed against the jeep. There is no negligence on the part of the driver of the jeep – R.W.1 is not established by respondents by adducing any rebuttal evidence.

14. On the other hand, the evidence of P.Ws.1 and 4, which is consistent, corroborative, reliable, trustworthy, supported by Exs.A1 and A2, established that basing on complaint presented by P.W.4 a case was registered, investigated into and charge-sheet was filed against R.W.1. In spite of cross-examination of P.Ws.1 and 4 at length, their evidence was not shaken.

15. In the above facts and circumstances, I am of the considered view that the evidence of P.Ws.1 and 4, which is reliable, trustworthy,

corroborative and supported by Exs.A1 and A2, well established that while P.W.1 along with one Sandhya was travelling on Hero Honda motorcycle from Armoor to Hyderabad on the way when reached Ramarajnagar Colony, Jeedimetla village on NH 7, the jeep bearing No.AP F 5797 came in opposite direction on the wrong side driven with high speed and in a rash and negligent manner and dashed the motorcycle driven by PW.1, due to which petitioner and Sandhya, pillion rider, sustained injuries and the accident was due to rash and negligence of the driver of the jeep bearing No.AP F 5797. To substantiate that the motor cycle bearing No.AP 25 G 3389 belongs to P.W.1, he filed Ex.A13 – xerox copy of the R.C. Book. In such circumstances, I find that the finding of the Tribunal is completely based on ocular evidence of P.Ws.1 and 2 and documentary evidence of Exs.A1 and A2 that the accident was due to rash and negligent driving of the driver of the jeep bearing No.AP F 5797 and at that time R.W.1 was the driver of the said offending jeep. As such, the finding of the Tribunal is legal, valid and do not suffer from any legal infirmities warranting interference.

16. With regard to the income of P.W.1 and disability, there is the evidence of P.W.1 which shows that his left leg was fractured at three places and right leg was fractured at two places and that he also received head injury and injuries all over the body. Immediately, he was shifted to Gandhi Hospital, Secunderabad and on the same day he was shifted to Apollo Hospital, Hyderabad, where he took treatment for 15 days as inpatient. He underwent operations to his legs and hands, rods were inserted, Doctor Hari Sarma and Doctor Rakesh treated him at Apollo

Hospital. He was also treated by Doctor Manohar, neuro surgeon and thereafter he was shifted to Amrutha Laxmi Multi Speciality Hospital, Nizamabad, where he took treatment for 15 days. Doctor Jaya Prakash treated him in Amrutha Laxmi Multi Speciality Hospital, Nizamabad. Again, he was admitted in Apollo Hospital and took treatment for 25 days and bone grafting was done.

17. Again, he was admitted in Amrutha Laxmi Hospital, Nizamabad, took treatment for 10 to 15 days to his left leg. He was again admitted in Apollo Hospital third time and underwent operation. He attended Apollo hospital about 15 times on different dates and underwent 7 to 8 operations and still he is taking treatment. In all, he incurred an expenditure of Rs.8,00,000/- for treatment. He has to undergo another operation for removal of rods for which he requires 4 to 5 lakhs.

18. P.W.2 is Dr.M.Hari Sarma, Orthopaedic Doctor and Consultant in Apollo Hospital, Hyderabad. Ex.A3 is the wound certificate issued by Apollo Hospital. According to P.W.2 the petitioner was admitted on 30.11.2001 with 1) Fracture of shaft of right femur, 2) Compound fracture of shaft of left femur, 3) displaced IC fracture of neck of left femur, 4) Compound fracture of left leg in the lower third, 5) compound fracture of both bones of right forearm, 6) Comminuted fracture distaled of left radius, 7) multiple lacerated wound over left hand, 8) fracture of left II meta carpal and 9) lacerated wound over scalp near occipital region.

19. That on 1.12.2001 petitioner was operated by way of debridement of wounds and internal fixation using nails and plates and screws for the injury Nos.1, 4, 5, 6, 7 and 9, the petitioner was again operated on 3.12.2001 by way of plating and screw fixation for the injury No.2 and by way of cancellation screw fixation for the injury No.3, injury No.8 was treated conservatively and that petitioner was discharged from the hospital on 15.12.2001.

20. P.W.2 further deposed that the petitioner was again re-admitted on 9.2.2002 as his fractures in the left radius (injury No.6), injury No.4 and injury No.2 were found not progress in uniting, hence petitioner was operated on 20.2.2002 by way of bone grafting for the above 3 injuries and the petitioner was discharged from the hospital on 1.3.2002. The same is corroborated by Ex.A5 – discharge summary.

21. As per the evidence of P.W.2 and Ex.A6 – discharge summary on 16.9.2003 the petitioner was admitted again because of presence of infection in the fracture of left femur, on 16.9.2003 he was operated by way of implant removal and debridement for fracture of left femur and that before coming to them the petitioner had initial treatment at Gandhi Hospital, Secunderabad on the date of injury. Exs.A3 to A6, A8 and A9 are issued by their hospital authorities. Exs.A3 to A6, A8 and A9 are confronted to P.W.2 that they were issued by their hospital.

22. P.W.2 further deposed that presently all the fractures have united and P.W.1 high speed restriction of movements of left wrist and forearm, deformity in left wrist and hand, and he assessed permanent

partial disability to the extent of 15% for left forearm and 35% for the injury of left femur and right femur.

23. During the course of cross-examination P.W.2 admitted that above mentioned injuries can also occur if a person falls from the great height and denied the suggestions that P.W.1 was treated conservatively and that petitioner can perform all his regular activities as he used to perform prior to the accident and that Exs.A3 to A6, A8 and A9 are fabricated and that Ex.A12 do not pertain to the petitioner.

24. The evidence of P.W.1 corroborated with the medical evidence of Doctor – P.W.2 supported by Exs.A3 to A6, A8 prescription, A9 – medical bills, A7 - pathological reports, A12 – x.ray films goes to suggest that P.W.1 sustained wounds as mentioned in Ex.A3 – wound certificate and he underwent surgery on 1.12.2001 by way of debridement of wounds and internal fixation using nails and plates and screws for the injuries 1, 4, 5, 6, 7 and 9, again he underwent surgery on 3.12.2001 by way of planting screws fixation for the injury No.2 and by way of cancellation of screw fixation for injury No.3. Injury No.8 was treated conservatively and discharged from hospital on 15.12.2001. As his fractures in the left radius injury No.6, Injury No.4 and injury No.2 were found not progress in uniting, P.W.1 was re-admitted on 9.2.2002 and underwent surgery on 20.2.2002 by way of bone grafting for injuries 2, 4 and 6 and discharged on 1.3.2002. Because of infection in the fracture of left femur, P.W.1 was again admitted on 16.9.2003, underwent surgery on 16.9.2003 by way of implant removal and

debridement for fracture of left femur and discharged on 19.9.2003. Prior to admission in the Apollo hospital, P.W.1 had initial treatment at Gandhi Hospital, Secunderabad on the date of accident itself. The evidence of P.W.2 further established that he had permanent disability to an extent of 15% to left femur and 35% for the injury of the left femur and right femur. But he has not produced any disability certificate in proof. Injuries on P.W.1 were established by the consistent and corroborative evidence of P.Ws.1 and 2 and Exs.A3, A6, A8, A9, A10 and A12-x.ray films.

25. The evidence of P.W.1 is that he is the owner of the vehicle and at the time of accident RC book of the vehicle was seized by the police, as such he filed xerox copy of the RC book which is marked as Ex.A13, which can be received as secondary evidence. According to which he is the owner of the motorcycle and there is no dispute that the Hero Honda Splendor belongs to P.W.1.

26. According to the evidence of P.W.1, prior to the accident he was studying B.Com final year, besides that he was a State player from Osmania University in Volley Ball and they are having 9 to 10 acres agricultural land and after college hours, he used to attend agricultural lands and raise vegetables and earning Rs.1,20,000/- per month. After the accident, he was not doing any work and discontinued his studies. Had he been completed B.Com., he would have become A-class officer and their lands are kept fallow. Accordingly, he lost his future earnings and became dependent on others and he became permanently disabled.

The further evidence of P.W.1 is that after the accident, he engaged one person by name Narayana and paying Rs.1,800/- per month. The motorcycle was also completely damaged. During cross-examination he has stated that at the time of accident he was twenty years old and admits that he is aware that any person earning Rs.60,000/- per annum have to file income tax and there is a suggestion that he was not cultivating lands and earning Rs.1,20,000/- per annum and the same is denied. His father is alive, himself and his father used to look after the cultivation. Other suggestion is that his lands were not kept fallow and that his father is looking after the same. Basing on the oral evidence of P.W.3 and admissions of P.W.1 during cross-examination the Tribunal find that P.W.3 – Ex.Sarpanch of Argul Village, who issued Ex.A11 income certificate to the effect that P.W.1 was paying Rs.2,000/- per month to the attendants and he was earning Rs.1,20,000/- by cultivation of lands is incompetent to issue such certificate as per G.O.Ms.No.276, dated 13.7.2002 of Panchayat Raj and Rural Development (MDL.II) Department and accordingly rejected Ex.A11 – income certificate.

27. With regard to the disability, the finding of the Tribunal is that in the case of **ARUN SONDHI vs. DELHI TRANSPORT CORPORATION¹** which is relied by the counsel for the petitioner there was amputation of one leg and other paralyzed and that injured who was a student suffered 100% disability, the Tribunal by applying multiplier ‘18’, awarded compensation. But in the case on hand P.W.1 has not filed any disability certificate and according to P.W.1 the disability sustained

¹ 2001 ACT 1779

by the petitioner is 15% of the left femur and 35% for injury on left femur and right femur and there was no amputation of the limb.

28. In view of the said facts and circumstances, the principle enunciated in the above decision is applicable to the facts of the present case. Such finding is legal and it was not questioned by the appellants herein.

29. With regard to the damage to the vehicle, though the petitioner contended that he sustained damage to his vehicle, but did not adduce any evidence that he spent any amount for repairs, except filing Ex.A13 – Xerox copy of the RC. Accordingly, the claim was rejected and the same is also not questioned by the appellants herein.

30. The Tribunal having considered both oral and documentary evidence on record and particularly the corroborative evidence of P.W.2 and documentary evidence under Exs.A1 to A10 and A12 came to the right conclusion that the petitioner - P.W.1 sustained injuries mentioned in Ex.A3 which are 7 in number and awarded Rs.25,000/- to each injury i.e., for 7 injuries Rs.1,75,000/- and awarded Rs.5,000/- each to two simple injuries i.e., Rs.10,000/-. In total awarded Rs.1,85,000/-, besides that awarded Rs.1,00,000/- towards pain and suffering for the injuries sustained. He also awarded Rs.1,99,459/- towards medical expenses as per Ex.A9 medical bills and hospital bills covered by Ex.A9. Besides that, having considered the proved fact that the petitioner was in hospital for about two years, awarded Rs.72,000/- for 24 months @ Rs.3,000/- per month.

31. In the facts and circumstances discussed above, I find that the findings and conclusions arrived at by the Tribunal are legal, valid and do not suffer from any legal infirmities. The amounts awarded are just compensation for the injuries suffered and surgeries undergone. The tribunal has rightly awarded compensation of Rs.5,56,459/- to the petitioner against the claim of Rs.10,00,000/- with subsequent interest at 7.5 % per annum from the date of the petition till the date of realization against the respondents 1 and 2 jointly and severally. The award is legal, valid and do not suffer from any legal infirmities warranting interference.

32. In the result, the appeal is dismissed with costs while confirming the award and decree dated 4.6.2007 in O.P.No.359 of 2002 on the file of the Motor Accident Claims Tribunal (District Judge) Nizamabad. The appellants - respondents are directed to deposit the said compensation amount after deducting the amount if any, already deposited or paid within thirty days from the date of the receipt of a copy of the judgment. On such deposit, the claimant is permitted to withdraw the same.

33. Advocate fee is fixed at Rs.2,500/-.

34. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

January, 2018
skmr