

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.3493 OF 2011

JUDGMENT:

Appellant-injured-claimant filed this appeal against the award and decree dated 17.03.2008 passed in M.V.O.P.No.2482 of 2006 by the X Additional Chief Judge (FTC), City Civil Court, Hyderabad, granting compensation of Rs.1,70,140/- payable by both the respondents along with proportionate costs and future interest @ 7.5% per annum as against the claim of Rs.2,50,000/- on account of the injuries sustained by the appellant in the motor accident occurred on 16.08.2006.

The appellant filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.2,50,000/- for the injuries sustained by him in the motor accident, alleging that on 16.08.2006 when he was going on TVS Pep scooter bearing No.AP9Z 6894 along with his friends Chennaiah and R.Satyanarayana from Blue Fox hotel, Hyderabad, towards Amberpet, Hyderabad, and when he reached Narayanaguda fly over bridge, a lorry bearing No.AP9V 0224 driven by its driver in a rash and negligent manner at high speed coming in the opposite direction, dashed against the scooter of the appellant, as a result, he fell down and sustained closed fracture of shaft of right femur, injuries to hands, injuries to head and all over the body. Immediately, he was shifted to Apollo Hospital, Hyderguda branch, and from there he was shifted to NIMS hospital, Hyderabad, where he was treated as in-patient from 17.08.2006 to 21.09.2006. Narayanaguda Police registered a case in crime No.257/2006 for the offence under Section 337 of India Penal Code and later altered to Section 338 IPC. It is further stated that the appellant was hale

and healthy, aged about 19 years at the time of accident and was earning Rs.4,500/- per month by working in Blue Fox hotel, Himayathnagar, Hyderabad. Thus, he claimed compensation of Rs.2,50,000/-.

The second respondent-Insurance Company filed counter denying the averments of the claim petition and specifically pleading that three persons were travelling on the scooter at the time of accident and there was contributory negligence on the part of the appellant in causing the accident. Insurance Company also filed an additional counter affidavit stating that it has not issued any policy for the vehicle bearing No.AP 9V 0224, as such no liability can be fastened on it and it is not liable to pay any compensation.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the accident took place on 16.08.2006 at about 11.45 p.m. due to rash and negligent driving of lorry bearing No.AP 9V 0224 by its driver?
- 2) Whether the petitioner is entitled to compensation? If so, to what amount and from whom?
- 3) To what relief?

On 07.11.2007, additional issues viz., (4) Whether the cover note policy is existing at the time of accident (5) To what relief? were framed for consideration of the Tribunal.

During the course of enquiry, PWs 1 to 3 were got examined and Exs.A.1 to A.10 were got marked on behalf of the appellant. On behalf of the respondents, no oral evidence was adduced. However, Ex.B.1 was got marked with consent.

The Tribunal considering the evidence of PW.1 and manner of accident, found that on 16.08.2006 the appellant along with his

friends viz., Chandraiah and Satyanarayana were going on TVS Pep scooter bearing No.AP 9AZ 6894 in violation of the Rules as the triple riding is prohibited under the Rules and thereby came to the conclusion that the accident was occurred due to the contributory negligence of the driver of the scooter pep and the driver of the offending lorry in the ratio of 25:75, following the judgment of this Court in **United India Insurance Co. Ltd., vs. K.Anjaiah and others**¹ wherein this Court fixed culpability for the accident at 75% on the part of the driver of the lorry and 25% on the part of the driver of the scooter. Accordingly, answered issue No.1. Further, the Tribunal has taken the income of the appellant as Rs.3,000/- per month @ Rs.100/- per day assuming that he is a labour, on the ground that he failed to adduce any evidence with regard to his monthly income. Thus, the Tribunal arrived the annual income of the appellant at Rs.36,000/-. As per the judgment of the Supreme Court in **Sarla Verma vs. Delhi Transport Corporation**², the Tribunal has taken the multiplier of '16' as the injured was aged 19 years at the time of accident. Further, the Tribunal has considered the disability sustained by the injured at 25% instead of 45% and thereby the Tribunal granted Rs.1,44,000/- towards partial permanent disability. In addition to the same, the Tribunal has granted a sum of Rs.20,000/- for the fracture sustained by the injured, Rs.10,000/- towards pain and suffering on account of the injuries sustained in the accident, Rs.45,854/- towards medical expenses as per Ex.A-7, Rs.2,000/- towards transport expenses, Rs.2,000/- towards extra nourishment and Rs.3,000/- towards loss of income for one

¹ 2004 (4) ALD 444

² 2009 (6) SCC 121

month. Thus, the Tribunal arrived an amount of Rs.2,26,854/- towards compensation and held that the appellant was entitled only for 75% of the said amount as there was contributory negligence to the extent of 25% on the part the driver of the scooter, in which the appellant was travelling, in causing the accident and thereby awarded Rs.1,70,140/- towards compensation along with costs and future interest @ 7.5% per annum from the date of petition till the date of realization. Being aggrieved by the quantum of compensation, the appellant filed this appeal seeking enhancement.

Learned counsel for the appellant would contend that the Tribunal has grossly erred in taking the income of the appellant as Rs.3,000/- per month instead of Rs.4,500/- per month as the appellant was working in Blue Fox hotel, Hyderabad. He would further contend that the Tribunal erred in fastening 25% liability on the ground of contributory negligence against the driver of the TVS Pep scooter in the absence of any evidence. The Tribunal also erred in attributing contributory negligence @ 25% on the driver of the TVS Pep scooter on the pretext that due to triple riding, the driver of the scooter felt inconvenience and thereby contributed to the accident, which is contrary to the evidence on record. The Tribunal also erred in taking the disability of the appellant as 25% instead of 45% disbelieving the evidence of P.W.2-Doctor and Ex.A.10-Disability certificate. The Tribunal without any reason reduced the percentage of disability to 25% from 45%, contrary to the decision of this Court in **Charan Singh vs. G.Vittal Reddy and another**³ wherein this Court held that the Tribunal has to consider the disability of injured as per the disability certificate

³ 2003 (4) ALD 183 DB

issued by the qualified doctor. The Tribunal cannot reduce the percentage of disability on whims and fancies, contrary to the disability certificate issued by the competent doctor. He would further contend that the Tribunal has granted meagre amounts towards transport charges, extra nourishment, loss of income and pain & suffering. Hence, he seeks enhancement of compensation under those heads. He further contended that the appellant is entitled for compensation towards loss of future prospects, as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***⁴.

Per contra, Sri K.Ashok Rama Rao, learned counsel appearing for the Insurance Company, would contend that the Tribunal has rightly taken the income of the appellant as Rs.3,000/- per month in the absence of any legal evidence in respect of his claim that he used to work in Blue Fox hotel and earn Rs.4,500/- per month; the Tribunal, based on the evidence, rightly held that the driver of the scooter as well as the driver of the offending lorry both contributed to the accident at 25:75 ratio, which cannot be find fault with; the Tribunal has rightly considered the disability of the appellant as 25% on the ground that during the course of treatment, he may be recovered soon as the injured was aged about 19-20 years at the time of accident; and the Tribunal granted compensation of Rs.1,70,140/- to the appellant by deducting amounts towards contributory negligence on the part of the motor cyclist at 25% in causing the accident. He would further contend that due to triple riding on the TVS Pep Scooter, the driver of the scooter caused accident. Hence, there is contributory negligence on the part of the driver of the scooter,

⁴ 2017 Law Suit (SC) 1093

which contributed in causing the accident. He placed reliance on ***Municipal Corporation of Greater Bombay vs. Laxman Iyer and another***⁵, ***Andhra Pradesh State Board Transport Corporation and another vs. K.Hemalatha and others***⁶ and ***K.Anjaiah (1 supra)***. Thus, he would contend that the appellant is not entitled for enhancement of compensation over and above the compensation awarded by the Tribunal and the appeal is liable to be dismissed.

In the facts and circumstances of the case and in considered view of this Court, the Tribunal erred in rejecting the claim of the appellant that he was earning Rs.4,500/- per month by working in Blue Fox Hotel, Hyderabad, as a worker, on the ground that the appellant failed to produce any documentary evidence. Being a worker, the appellant could not produce any documentary evidence in support of his claim. In ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited***⁷, the Hon'ble Supreme Court held that the person aged about 35 years, working as a coolie, could easily earn Rs.4,500/- per month. Hence, the Tribunal ought to have taken the earnings of the appellant as Rs.4,500/- per month treating it as genuine income of the appellant and thereby the annual income of the appellant would be Rs.54,000/-. As the appellant is aged about 19 years, as per the ratio laid down by the Hon'ble Supreme Court in ***Sarla Verma (2 supra)***, the appropriate multiplier is '16' as rightly taken by the Tribunal. As per the evidence of P.W.2-Doctor and Ex.A.10-Disability Certificate, the appellant has suffered partial permanent disability at 45%, however, the Tribunal has taken the disability of

⁵ (2003) 8 SCC 731

⁶ (2008) 6 SCC 767

⁷ 2011 (6) ALT 48 (SC)

the appellant as 25% contrary to the evidence on record. The Tribunal has not assigned any reasons for reducing the disability suffered by the appellant. In view of the ratio laid down in **Charan Singh (3 supra)** said finding of the Tribunal is set aside and it is held that the appellant suffered 45% disability. Therefore, the appellant is entitled for Rs.3,88,800/- (Rs.54,000/- X 16 X 45/100) towards 45% partial permanent disability. As per the evidence available on record, in the accident, the appellant has suffered closed fracture dislocation of left knee, bicondylar fracture of left tibia, grade IIIA compound comminuted bicondylar fracture of right tibia, intercondylar extension and other multiple injuries all over his body. Surgery was conducted on 07.09.2006 for butter plating of right tibia, on account of fractures, his movements were restricted and he was not in a position to move from the bed totally and there was limping in his walking and his right leg was shortened. He was treated as in-patient in hospital for a month. Hence, it is just and proper to grant a sum of Rs.15,000/- towards pain and suffering, Rs.15,000/- towards extra nourishment to meet the post operative nourishment expenses and further sum of Rs.15,000/- towards future medical expenses. Further, the petitioner is entitled for Rs.4,500/- towards loss of income as against Rs.3,000/- granted by the Tribunal.

As seen from the impugned award, the Tribunal held that the driver of the TVS Pep scooter also contributed to the accident at 25%, relying on the decision of this Court in **K.Anjaiah (1 supra)** wherein this Court held as follows:

“ A plain reading of the above provision, it is clear that triple riding is prohibited on a two wheeler. When a statutory bar imposed under the Act, it is not made to be ignored by the riders of two wheelers, but to be

followed in their own interest and safety. Though it has come in the evidence of PW-2 who claims to be an eye-witness to the accident that on the fateful day the driver of the accident lorry drove the lorry in a rash and negligent manner resulting in accident, but it is common understanding that one will certainly feel discomforted when riding a two wheeler with two pillion riders and naturally his balance over the vehicle will be limited by reason of accommodating two pillion rides and he will not have that ease and comfort of riding with one pillion rider. In the instant case, it is admitted that there was triple riding on the scooter. Under those circumstances, even in the absence of independent evidence adduced by the Insurance Company that the accident had occurred due to triple riding, it can be reasonable presumed that the rider of the scooter was discomforted by reasons of allowing two pillion riders and this contributed in causing the accident. Had he been riding the scooter with one pillion rider, probably he would have averted the accident by swerving the scooter to the extreme left side, but could not do so probably, his hands and legs movements was limited due to the congestion. In such view of the matter, the culpability in causing the accident is fixed at 75% on the part of the driver of the accident lorry and 25% on the part of the rider of the scooter.”

In ***Laxman Iyer (5 supra)***, the Hon'ble Supreme Court held that *though the driver may not have been in this case wholly responsible for the accident, as contended, from the mere fact that the victim acted in contravention of a traffic regulation alone, complete immunity from liability of the driver or the appellant Corporation for the accident so as to disown totally the responsibility to compensate the injured or dependants of the victim cannot be accorded. Merely because there may have been a breach of any traffic regulation, in the absence of concrete, clinching, positive and legally acceptable material to fix the sole responsibility for the*

accident only on such injured/victim, which is conspicuously absent on the facts and circumstances of this case, the liability of the defendant will have to be determined. The evidence on record proves negligence of the driver too, and the infirmity in the order of the Tribunal and the High Court lay in rejecting the plea of contributory negligence completely. The Tribunal as well as the High Court ought to have appropriately apportioned the negligence keeping in view the materials placed on record and properly balancing rights of the parties.

In **K.Hemlatha (6 supra)**, the Hon'ble Supreme Court has relied on the following observations made in its earlier decision in *T.O. Anthony vs. Karvarnan* [(2008) 3 SCC 748]:

“Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of ‘composite negligence’ will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error”.

In view of the judgments of the Hon'ble Supreme Court and this Court referred to above and having gone through the evidence on record carefully, this Court is of the considered view that the Tribunal has rightly held that the driver of the TVS Pep Scooter

contributed to the accident @ 25% and in the absence of any contra evidence, the finding of the Tribunal in this regard need not be interfered with. Therefore, the appellant is entitled for compensation @ 75%. Further, granting of interest @ 7.5% per annum by the Tribunal need not be interfered with as the same is in consonance with the bank interest rate prevailing at the relevant period.

In view of the above discussion, the appellant is entitled for the enhanced compensation, as per the details given below:

1) Fracture of leg	Rs. 20,000/-
2) Pain and Suffering	Rs. 15,000/-
3) Partial permanent disability	Rs.3,88,800/-
4) Medical expenses	Rs. 45,854/-
5) Future medical expenses	Rs. 15,000/-
6) Transport charges	Rs. 2,000/-
6) Extra nourishment	Rs. 15,000/-
7) Loss of income for one month	Rs. 4,500/-

	Rs.5,06,154/-

out of which, the appellant is entitled for Rs.3,79,615/- towards 75% of compensation to which he is entitled for, as stated above. Accordingly, the appeal is allowed enhancing the compensation amount granted by the Tribunal from Rs.1,70,140/- to Rs.3,79,615/- along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization.

Though the compensation claimed by the appellant before the Tribunal was only Rs.2,50,000/-, in view of the decision of the Hon'ble Supreme Court in **Nagappa vs. Gurudayal Singh and others⁸**, in M.V.Act there is no restriction that the compensation should be awarded only upto the claim made by the claimant. Hence, the compensation awarded by the Tribunal is enhanced to Rs.3,79,615/-. However, the appellant shall pay the difference of Court Fee for the excess amount of Rs.1,29,615/-.

⁸ (2003) 2 SCC 274

The respondents shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with proportionate costs and interest @ 7.5% per annum, after deducting the amounts if any already deposited, payable by the respondents jointly and severally within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellant is at liberty to withdraw the entire amount.

Miscellaneous petitions pending, if any, shall stand closed.
There shall be no order as to costs.

(M.GANGA RAO, J)

16th November, 2018
sur

