

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.2156 of 2009

JUDGMENT :

The appellant-claimant aggrieved by the Award and decree dated 27.11.2006 in O.P.No.2081 of 2001 on the file of the Motor Accident Claims Tribunal-cum-III Additional District Judge (FTC), Nizamabad, awarding compensation of Rs.72,000/- with interest at 7.5% per annum from the date of petition till the date of realization against respondents 1 and 2 jointly and severally with direction to them to deposit the said amount within three months from the date of award and permitting the petitioner to withdraw 50% of the amount and directing the balance 50% to be kept in a fixed deposit in any nationalized bank for a period of five years, preferred this appeal.

2. The contention of the appellant/claimant is that the Tribunal failed to consider the oral and documentary evidence adduced by the claimant and several fracture injuries sustained by the claimant in the accident occurred on 27.6.2001 and ought to have awarded the amount as claimed. It is further contended that the Tribunal failed to award compensation towards medical expenditure, loss of dependency, pain and suffering while awarding compensation.

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

On 27.6.2001 while the claimant was proceeding on his cycle from Rokot Hanuman Temple road towards Nizamabad town at

about 10.00 AM, auto bearing No.AP 12 U 973 came behind at high speed in a rash and negligent manner and dashed the cycle, as a result, he fell down and sustained fracture to the spinal card, wedge compression, lumbar vertebra and other multiple and grievous injuries to hands, legs, chest and other parts of the body.

4. Immediately, he was shifted to Government Headquarters Hospital, Nizamabad. After discharge, he took further treatment under private Doctors and spent Rs.40,000/- for medicines and incidental charges and Rs.10,000/- for extra-nourishment and still he is taking treatment with private Doctors and requires further amount.

5. Prior to the incident, the petitioner was hale and healthy and was earning Rs.10,000/- per month by business. Due to injuries sustained in the accident, he is not able to do any work and his life became gloomy and dark and completely bedridden and thus suffered permanent disability.

6. The 2nd respondent – Insurance Company filed counter contending that the driver of the auto bearing No.AP 12 U 973 has no valid and effective driving licence at the material time of accident and there is no valid policy issued by the company to the said auto and there is no fitness certificate to it to ply from the competent authority. It was further contended that in the F.I.R. and at all the places the auto number was overwritten altering the previous written number. The original number is shown as AP 12 U 973. The 1st respondent by not reporting the accident soon after occurrence has violated the policy conditions and

for that reason the 2nd respondent is not liable to pay the compensation. The compensation and interest claimed are excessive for which the petitioner is not entitled.

7. After hearing and consideration of the entire material on record, the Tribunal settled the following issues for trial :

1. Whether the accident was occurred due to rash and negligent driving of the auto bearing No.AP 12 U 973?
2. Whether the petitioner is entitled for compensation?
If so, to what amount?
3. Whether respondent No.2 is liable to pay compensation?
4. To what relief?

8. In the enquiry proceedings, the petitioner got examined P.Ws.1 to 3 and got marked Exs.A1 to A22, Exs.X1 and C1. The Insurance Company has got marked Exs.B1 and B2 by consent without oral evidence.

9. Now the point that arises for determination is :

‘Whether the Tribunal passed the award without consideration and appreciation of the oral and documentary evidence on record and is suffering from legal infirmities warranting interference in this appeal ?’

10. The appellant is the claimant. He is not disputing a finding with regard to rash and negligence is concerned. The only dispute is with regard to appreciation of evidence of P.Ws. 1 to 3 and documentary evidence under Exs.A1 to A22 and awarding compensation of Rs.72,000/- against the claim of Rs.2,00,000/-.

11. The learned counsel for the appellant contended that the Tribunal has not considered the oral and documentary evidence adduced by parties. Whereas, respondent contended that the finding of the tribunal is legal and valid. The Tribunal passed the award after consideration of both oral and documentary evidence and it does not suffer from any legal infirmities.

12. The evidence of P.W.1 is consistent and not rebutted by adducing any rebuttal evidence. The evidence of P.W.1 is that on 27.6.2001 while he was proceeding on cycle at about 10 AM, auto bearing No.AP 12 U 973 came behind at high speed in a rash and negligent manner and dashed the cycle, due to which he fell down and sustained multiple grievous injuries. During cross-examination it was elicited by the respondent that at the time of accident he was going on cycle and the auto came behind and dashed. One person who gathered at the occurrence, drafted Ex.A1 report and petitioner's wife presented the same in the Police Station. The reason elicited by respondent during cross-examination is that immediately after the impact, the petitioner fell down and was not in a position to get up, hence he could not see the auto number. He was told that the public gathered, detained the auto and the suggestion that by deleting the number of auto which actually gave dash, planted the auto which got insurance with the 2nd respondent was denied. He further denied that in the complaint as well as in the F.I.R. the auto number was corrected. Ex.A5 is the copy of the F.I.R., Ex.A6 is the copy of the charge-sheet.

13. A perusal of Ex.A5 goes to suggest that N.Gangamani, wife of P.W.1, presented the complaint - Ex.A5 on 27.6.2001 at 15.30 hours i.e., at 3.30 PM with regard to the accident occurred at 10 AM on the same day. A perusal of Ex.A5 goes to suggest that there is correction at all places with regard to number of the auto, but whereas in the charge-sheet under Ex.A6 there is no such correction and after thorough investigation, the Investigating Officer filed the charge-sheet against the driver of auto bearing No. AP 12 U 973 finding that the driver drove the auto in a rash and negligent manner and dashed against the cyclist, who is also proceeding in the same direction, as a result, he fell down from the cycle and sustained grievous injuries. There is also specific assertion in the charge-sheet that on 25.8.2001 at 10 AM the noted accused at column 3 of the charge-sheet came to the police station, surrendered and the Investigating Officer arrested him, issued arrest memo and produced before the Court for judicial remand.

14. The respondent – Insurance Company took the plea of material correction in the auto number in F.I.R. It is obligatory on the part of the 2nd respondent to adduce rebuttal evidence against the evidence of P.W.1. Admittedly, there is no contrast evidence produced by the 2nd respondent. In spite of cross-examination of P.W.1 at length, nothing elicited to discard the evidence of P.W.1. Merely because there is overwriting in Ex.A5 - F.I.R. in respect of the auto number, it is not possible to say the auto bearing No.AP 12 U 973 was incorporated in the place of other auto number in the absence of any such rebuttal evidence. The charge-sheet under Ex.A6 crystal clears the discrepancy wherein

there is specific assertion that on 25.8.2001 the driver of the auto himself voluntarily surrendered before the police, he was arrested and sent for remand. The Investigating Officer, after thorough investigation, filed the charge-sheet against the driver of the auto bearing No.AP12 U 973 and the claim was also made against the insured and insurer of the auto bearing No. AP 12 U 973.

15. The Tribunal, having considered the consistent oral evidence of P.W.1, which is not rebutted by the 2nd respondent by adducing any oral or documentary evidence, supported by Ex.A6 – charge-sheet, rightly came to the conclusion that the auto involved in the accident is bearing registration No.AP 12 U 973 and its driver drove it in rash and negligent manner with high speed and dashed P.W.1, who was proceeding on cycle, from behind and the accident was due to rash and negligent driving of the driver of auto bearing No.AP 12 U 973 and such finding is legal and do not warrant interference.

16. The specific contention of the appellant is that the evidence of P.Ws.1 to 3 and Exs.A1 to A22 were not considered by the Tribunal. The Tribunal on issues 2 and 3 considered the evidence of P.W.1 wherein he deposed that he sustained fractures to the spine card, wedge compression, lumbar vertebra and other multiple and grievous injuries to hands, legs, chest and other parts of the body. Immediately, he was shifted to near Headquarters Hospital, Nizamabad, where he took treatment for 7 days as inpatient and after discharge, took further treatment in Deepa Orthopaedic Hospital, Sri Venkateswara Hospital,

Nizamabad, Tirumala Orthopaedic Hospital and Vishnavi Hospital, Nizamabad and incurred expenditure of Rs.60,000/- for the medicines and incidental charges and Rs.10,000/- for the extra-nourishment and engaged an attender by paying Rs.2,000/- per month. To substantiate the nature of injuries sustained by P.W.1 and also the treatment the petitioner/claimant examined the Doctor V.Akhilesh, a practicing consultant and Orthopaedic surgeon, who is running Sri Vishnavi Hospital and previously run Venkateswara Hospital at Nizamabad. P.W.3 is the Civil Assistant Surgeon, Government Headquarters Hospital, Nizamabad. His evidence is that on 15.7.2001 he examined P.W.1 in his private hospital and found post traumatic paraplegia with bed sores over the ankle and heels. Infection was present. Weakness in both the lower limbs, due to spinal cord injury. Treatment given to the petitioner as inpatient conservatively and he was discharged on 5.8.2001. To substantiate the same, he produced Ex.X1 - case sheet and copy of which is Ex.A15. During the cross-examination, the only suggestion to P.W.3 is that he prepared Ex.X1 to suit the convenience of the petitioner and he had not given any treatment to P.W.1, as inpatient, in his hospital. Ex.B1 - case sheet pertains to him, therefore, Ex.X1 is original of Ex.B1 and Ex.A15.

17. P.W.2 is the Doctor who treated P.W.1 and he deposed that P.W.1 came to his hospital on 3.12.2001 and he was treated as inpatient from 3.12.2001 to 18.12.2001 for wedge compression, fracture with paraplegia, urine incontinence and infection and bed sore etc., He was advised to have regular dressing and physiotherapy for mobilisation with

walker and medications and discharged him on 18.12.2001. He was asked for review follow up and accordingly reviewed him on 14.2.2002, 3.3.2002 and 12.8.2005.

18. The evidence of P.W.2 established that the injuries mentioned in Ex.A7 - medical certificate are corresponding to injuries mentioned in Ex.A2 - discharge summary of Dr.V.Akhilesh - P.W.2 himself and Ex.A10 - Disability Certificate issued by the District Medical Board, Nizamabad.

19. Since P.W.2 is the Doctor who treated P.W.1, he is the proper person to speak about the nature of injuries and the disability, if any. Accordingly, P.W.2 stated that P.W.1 cannot do normal works, there is no possibility of recovery due to damage to nerves tissue, surgery may be needed for stabilisation of the back and for the bed sore. Exs.A1, A2 and A11 are confronted through P.W.2. During cross-examination P.W.2 stated that the injuries are six months old by the time he treated on 3.12.2001, since accident occurred on 27.6.2001. The hospital maintained case sheet, but the same is not before him when he gave evidence. The case sheet will be available in Venkateswara Hospital. The only suggestion to P.W.2 is that he has not treated P.W.1 in his hospital as inpatient; as such, he is not able to produce the case sheet. P.W.2 stated that the injuries on person of P.W.1 are possible in motor accident.

20. In view of the above discussion with regard to the evidence of P.Ws.1 to 3 and documentary evidence under Exs.A2, A7, A10 and

X1 through P.Ws.2 and 3 and the Tribunal also elaborately discussed the evidence of P.Ws.2 and 3 besides considering Exs.A2, A3, A7, A9, A11, A15, A19, A21 and A22 and came to the conclusion that P.W.2 treated P.W.1 in his hospital as inpatient from 3.12.2001 to 18.12.2001 for wedge compression, fracture with para parasis, urine incontinence and infection and bed sore etc., He was advised to have regular dressing and physiotherapy for mobilisation with walker and medications. P.W.1 was reviewed on 14.2.2002, 3.3.2002 and 12.8.2005. It is also the evidence of P.W.2 that P.W.1 cannot do normal works, there is no possibility of recovery due to damage to nerves tissue, surgery may be needed for stabilisation of the back and for the bed sore.

21. P.W.3 Dr.L.Ramulu examined P.W.1 on 15.7.2001 and he maintained Ex.X1 case sheet corresponding to Ex.A15 and Ex.B1. Ex.A7 is the medical certificate issued by the Government Hospital, Nizamabad wherein certified wedge compression is shown for lumbar vertebra and he was admitted in the hospital on 27.6.2002 and discharged on 2.7.2004. Ex.A9 is the discharge summary of the hospital which shown all these facts. The Tribunal basing on the corroborative evidence of P.Ws.1 to 3 and documentary evidence referred to above came to the conclusion that gravity of the injuries sustained by the petitioner in the accident are caused by the offending auto. Even though the injuries were operated, still back was not completely united and he is unable to walk. The Court also observed while recording the evidence and noted in the judgment *“As observed by this court while recording evidence of the petitioner he was brought to court on palms by two attendants. The*

petitioner sustained injury due to rash and negligent driving of the offending auto as proved by the documentary evidence on the record hence he is entitled for grant of compensation for the same.” An amount of Rs.20,000/- was awarded for the wedge compression, lumbar vertebra, which is a meagre amount and requires to be modified. Further, the Tribunal considered Ex.A1 - original bills of P.W.2 issued by Venkateswara Hospital for Rs.7,920/- and Ex.A17 – patient final bill issued by Deepa Orthopaedic Hospital for Rs.12,000/- and Exs.12, 18 and 20 – medical bills for Rs.9,928/-. Exs.A12, A18 and A20 are confronted to P.W.3 and the said amounts were awarded towards medicines to the petitioner. Besides that, the Tribunal awarded Rs.5,000/- towards pain and suffering and another Rs.5,000/- towards extra nourishment and Rs.2,000/- towards transport charges which are very meagre amounts warranting interference and require enhancement by way of modification. And another Rs.10,000/- was awarded towards non-pecuniary damages which is very meagre and requires modification. In all, the Tribunal awarded Rs.71,848/- rounded to Rs.72,000/-.

22. In view of the above discussion, I am of the considered view that there is no substance in the contention of the petitioner that the Tribunal has not considered oral evidence of P.Ws.1 to 3 and not properly appreciated documentary evidence Exs.A1 to A22. The Tribunal well considered the oral evidence of P.Ws.1 to 3 and Exs.A1 to A22 and also Exs.B1 and B2 & Exs.X1 and C1 along with documents filed by the petitioner and came to the right conclusions, but however awarded very meagre amounts under different heads which require

modification. Accordingly, in view of the above discussions, I am of the considered view that the award requires modification and enhancement of the compensation.

23. While awarding compensation, the amount has to be determined which is to be in the real sense 'damages' which in turn appears to be 'just and reasonable'. Though compensation for loss of limbs or life cannot be weighted in golden scales, but at the same time compensation is not expected to be a windfall for the victim. While awarding compensation a duty is cast on the Courts to weigh the various factors and quantify the amount of compensation, which should be just and which would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration and requires judicious approach. The expression 'just' denotes equitability, fairness, reasonableness and non-arbitrariness.

24. It is also clear from the Tribunal's decision that no material was placed before the Tribunal to prove as to what was the real occupation of P.W.1 and the income derived by him. It is not clear what type of business he was doing. In the absence of any such evidence, the attending circumstances have to be considered. Further more, there was

no material before the Tribunal to arrive at a figure of Rs.10,000/- per month from business. The consistent evidence of P.W.1 is that immediately after the accident he was shifted to Government Headquarters Hospital, thereafter he has taken treatment in Deepa Orthopaedic Hospital, Nizamabad. According to P.W.3, as per case sheet, he was admitted in the Hospital on 15.7.2001 and discharged on 5.8.2001, accordingly he was hospitalized for about 20 days. P.W.3 treated P.W.1 for post traumatic para pelisis with bed sore for the ankle and heels and while infection was present and there was weakness in both the lower limbs, due to spinal chord injury. In the Government Hospital he took treatment for 7 days as inpatient. Later he took treatment in Venkateswara Hospital, Nizamabad under P.W.2 and thereafter, in Tirumala Orthopaedic Hospital and Vishnavi Hospital, Nizamabad for the injuries sustained by him.

25. The evidence of P.W.2 corroborated with P.W.1 supports Exs.A1, A2 and A11 and A10. For the corresponding injuries mentioned in Ex.A7 - wound certificate issued by the Dr.T.Narsing Rao, Orthopaedic Surgeon and Civil Assistant Surgeon, Nizamabad, due to fracture injuries on spinal card, compression fracture of lumbar vertebra, he will be unable to walk without any support. He is still suffering with pain and undergoing treatment regularly and unable to work with right hand as rod was inserted in the right hand. He has to undergo another operation for removal of implants in the right hand. P.W.2 - Doctor deposed that P.W.1 cannot do normal work. There is no possibility of recovery due to damage to nerves tissue, surgery may be needed for

stabilisation of the back and for the bed sore. Ex.A10 is the disability certificate issued by the Medical Board and P.W.2 confronted the injury mentioned in Ex.A10 and these are supported by x.rays under Ex.A22 and Ex.C1. As per Ex.A10, Doctors assessed the disability at 50% wedge lumbar L1 para parasis and not able to walk. The disability is partial permanent disability. There is no dispute with regard to disability and the petitioner is unable to walk or work and he is completely depending on the services of an attender.

26. With regard to income, there is absolutely no evidence. But however, the petitioner as per the claim petition was aged about 30 years and his income is shown as Rs.10,000/- from business. In Exs.A1, A2, A3, A4, A5, A6, A7, A15, the age of P.W.1 was noted as 30 years, whereas in Ex.A10 dated 23.9.2005 it was noted as 32. In the absence of any documentary evidence, the age of the injured P.W.1 is taken as 30 years and the monthly income of P.W.1 is assessed at Rs.3,000/- per month. By applying the *Sarla Verma v. DTC*¹ the multiplier applicable to the facts of the present case is '17'. Having assessed the income of the deceased at the rate of Rs.3,000/- per month, which comes to Rs.36,000/- per annum and after deducting 50% towards his personal expenses, it comes to Rs.18,000/- per annum and by applying multiplier '17', the compensation comes to Rs.3,06,000/-. The disability as per Ex.A10 is 50% and 50% of which comes to Rs.1,53,000/-. Besides that he is entitled to Rs.50,000/- towards pain and suffering, Rs.3,000/- towards transportation, Rs.10,000/- towards extra-nourishment and Rs.500/-

¹ (2009) 6 SCC 121

towards damage to the clothing and an amount of Rs.40,000/- towards injury - wedge compression, lumbar vertebra. The petitioner is also entitled to Rs.20,000/- towards non-pecuniary damages. Besides that, he is also entitled to Rs.7,920/- towards Ex.A1 original bill, Rs.12,000/- towards Ex.A17 – patient final bill and Rs.9,928/- towards Exs.12, 18 and 20 – medical bills. In total the petitioner is entitled to the compensation of Rs.3,06,348/- rounded to Rs.3,10,000/- on all counts. By virtue of Ex.B2/A14 policy which is in force by the date of accident, the 2nd respondent being insurer has to indemnify the liability of the 1st respondent. The respondents 1 and 2 are jointly and severally liable to pay the compensation.

27. In *Adam Indur Muttemma and Ors. Vs. Rathod Reddia and Ors.*² this Court observed that the first division bench in *Pidigala Linga Reddy and Others Vs. Satla Srinivas*³ took a view that the Court can grant compensation exceeding the claim amount subject to payment of Court fee, if any, payable. Another Division bench of this Court in *New India Assurance Company Limited V. Chintnala*⁴ took exactly the opposite view holding that the Tribunal/Court is not empowered to award higher compensation than the compensation claimed by the claimants. The order of reference was made on 28.6.2002. Thereafter, this Court relied on the decision of the Apex Court in *Nagappa v. Gurudayal Singh and Others*⁵ wherein the Apex Court held that in appropriate case, wherefrom the evidence brought on

² 2015 (4) ALD 585

³ 2001 (6) ALD 429 (DB)

⁴ 2002 (3) ALT 194 (DB)

⁵ (2003) 2 SCC 274

record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is it should be just compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. The same view was thereafter reiterated by the Apex Court in ***Rajesh and others Vs. Rajbir Singh and Others***⁶.

28. In view of the law laid down in the aforementioned judgments, I am of the opinion that because of the erroneous conclusions, the Tribunal came to the conclusion that the claimant is entitled to Rs.72,000/-, but, whereas, as per law and facts the claimant is entitled to the compensation of Rs.3,10,000/-.

29. By relying on the above decisions, I find the compensation amount of Rs.3,10,000/- is just compensation for which claimant is entitled.

30. Accordingly, the appeal is allowed while setting aside and modifying the award and decree dated 27.11.2006 in O.P.No.2081 of 2001 on the file of the Motor Accident Claims Tribunal-cum-III Additional District Judge (FTC), Nizamabad, and awarded an amount of Rs.3,10,000/- as compensation with costs and interest at 7.5% per annum from the date of the petition i.e., 28.12.2001 till the date of realization against respondents 1 and 2 jointly and severally which shall be deposited within 45 days from the date of receipt of a copy of the

⁶ (2013) 9 SCC 54

judgment after deducting the amount, if any, already deposited/paid. On such deposit, the claimant is permitted to withdraw the same.

31. The appellant/petitioner is directed to pay deficit court fee on the amount awarded exceeding the claim amount within thirty days from the date of receipt of a copy of the judgment.

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

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

22nd January, 2018.
skmr



JUSTICE N.BALAYOGI