

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No. 240 OF 2011

JUDGMENT:

1. The appellant-National Insurance Company Limited preferred this appeal aggrieved by the Award and decree dated 05.04.2007 passed in OP.No.1814 of 2001 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad, awarding total compensation of Rs.2,50,000/- with interest 7.5% per annum from the date of filing the OP till the date of deposit, and holding that the appellant-Insurance company and second respondent-owner of crime jeep are jointly and severally liable to pay the said compensation within one month from the date of Award.

2. The main contention of the appellant-Insurance company is that since it is a case of injuries, no compensation amount should be awarded under the head of 'loss of estate'; and that the Tribunal erred in assessing the loss of earning capacity at 40% and applying multiplier '18' and also erred in awarding higher amounts of compensation under different counts.

3. The brief facts of the claim are that on 19.07.2001 while the first respondent/claimant was standing by the side of the road at about 5.00 pm, a jeep bearing registration No.AP 13T 6112 driven by its driver in rash and negligent manner, at high speed, without blowing horn, came from behind and dashed

against him (first respondent/claimant), due to which, he sustained fractures of L1 and L2 vertebra, fracture of both side ribs, fracture of both bones, head injury, skull fracture, back bone fracture and multiple injuries all over the body. Immediately after the accident, he was shifted to Government Hospital, Armoor and thereafter he was referred to Amrutha Laxmi Multi Specialty Hospital, Nizamabad for better treatment, whereat he was operated twice and he incurred Rs.2,00,000/- for treatment.

4. Before the Tribunal, the appellant herein opposed the claim by filing counter disputing the age, avocation, income and rash and negligence, the manner in which accident occurred and nature of injuries stated in the claim petition.

5. Based on the rival pleadings, the Tribunal framed the following issues for settlement.

1. Whether the accident occurred due to rash and negligent driving of the Jeep bearing No. AP13T6112 by its driver?
2. Whether the petitioner is entitled for compensation, if so, to what amount and from whom ?
3. To what relief. ?

6. In order to prove the respective claims, on behalf of the first respondent/claimant, P.Ws.1 and 2 were examined and Exs. A.1 to A.10 were got marked. On behalf of the appellant-Insurance Company and second respondent-owner of the crime vehicle, no oral evidence was adduced, however, Ex.B.1 policy was got marked.

7. In this appeal, the appellant-Insurance Company is not questioning the finding of the Tribunal with regard to rash and negligence on the part of the driver of the crime jeep and the injuries sustained by the first respondent/claimant in the accident. The Tribunal having considered the evidence of P.W.1 and supported evidence at Ex.A.1-copy of FIR wherein it was specifically stated that on 19.07.2001 at about 1700 hours Ex.A.1 complaint was given at about 1830 hours on the same day, held that there is no scope for fabrication of the said document, Further, considering the evidence of P.W.1 and supported evidence of Ex.A.1-FIR, the Tribunal held with regard to the involvement of crime vehicle in the accident and the rash and negligence on the part of driver of the crime vehicle bearing No. AP 13T 6112. No rebuttal evidence was adduced denying the same. Having considered the evidence of P.W.1 and contents of FIR, Ex.A.1, the Tribunal rightly held that the accident occurred due to rash and negligent driving of driver of crime jeep bearing No. AP 13T 6112. The said findings of the Tribunal is valid, legal and do not suffer from any legal infirmities warranting interference.

8. Coming to the injuries sustained by the first respondent/claimant in the accident, there is consistent and corroborative evidence of P.Ws.1 and 2. The evidence of P.W.1 which is corroborated by the evidence of P.W.2, the doctor who treated the claimant in the Amrutha Laxmi Multi Specialty hospital, Nizamabad, who issued Ex.A.3-Medico Legal Certificate and

Ex.A.4-Medico Legal Register extract goes to suggest that in the accident occurred on 19.07.2001, the first respondent/claimant suffered fracture of L1, L2 Transverse processes left side, Fracture L2 Transverse processes right side etc which are grievous in nature and the same are confronted by P.W.2 . In Ex.A.4, it was specifically mentioned that he was suffering pain in chest and back and advised him bed rest. It was further specifically stated therein that there was 12 x 2 cms abrasion anterior aspect of chest, tenderness anterior aspect of chest, tenderness in lumbar region and the x-ray shows fracture L1, L2 transverse processes left side with fracture, L2 transverse processes right side also and it was diagnosed that multiple transverse processes fracture of L1,L2. Based on the injuries sustained by the first respondent/claimant in the accident, P.W.2 assessed the disability suffered by him at 40% permanent partial and accordingly issued Ex.A.9 disability certificate . Before issuing Ex.A.9, he advised P.W.1 to obtain X-ray and based on the same, he opined that due to the injuries and fractures, P.W.1 cannot attend to agriculture work and hard work.

9. Therefore the evidence of P.W.1 corroborated by the evidence of P.W.2 and supported by Exs.A3, A4,A9 and A10 well established that P.W.1 sustained fracture L1, L2 transverse process left side, 2. Fracture L2, Transverse process right side. P.W.2 specifically stated in his evidence that on 5.2.2004, he examined P.W.2 physically and clinically and found post traumatic chronic back ache and accordingly assessed 40% permanent

partial disability and further stated that due to the injuries sustained by him, he cannot do agricultural work and hard work.

10. With regard to the age and income of P.W.1, there is the evidence of P.W.1 and P.W.2, according to which, P.W.1 took treatment up to 24.07.2001 in Amrutha Laxmi Multi Specialty Hospital, Nizamabad. The Tribunal considering the evidence of P.W.2, who treated P.W.1 in Amrutha Laxmi Multi Specialty Hospital, Nizamabad, which issued Exs.A.3 and A.4 came to the conclusion that P.W.1/claimant suffered 40% permanent and partial disability, and he was aged 23 years. In Ex.A.1-FIR and in the claim petition, it was stated that P.W.1 was aged 22 years as on the date of accident. Accordingly considering the age of P.W.1 as 22 years, the Tribunal applied the multiplier '18'. Though the claimant contended that he used to earn Rs.10,000/- per month from his agriculture-cum-business, in the absence of any supporting document, the Tribunal took the earnings of P.W.1 rightly at Rs.2,000/- per month and accordingly assessed the compensation payable for 40% disability at $\text{Rs.2000/-} \times 12 \times 18 \times 40\% = \text{Rs.1,72,8000/-}$. Besides the same, the Tribunal also awarded Rs.10,000/- towards two grievous injuries as per II Schedule (@ Rs.5,000/- per injury), Rs.10,000/- towards medical expenses, Rs.25,000/- towards pain and suffering and Rs.12,200/- towards transportation and extra nourishment.

11. Further, the Tribunal also awarded Rs.20,000/- towards loss of estate. Since it is a case of injuries, the first

respondent/claimant is not entitle to receive the compensation under the head of loss of estate. The compensation under the head of loss of estate can be granted only in the cases of death. Hence, the compensation amount of Rs.20,000/- awarded by the Tribunal towards loss of estate has to be excluded and accordingly the said amount is rejected.

12. By virtue of Ex.B.1 policy, which was in force from 14.11.2000 to 13.11.2001, whereas the accident occurred on 19.7.2001, the Tribunal observed that appellant-Insurance Company has to indemnify the insured and accordingly held that the appellant-Insurance Company and second respondent-owner of the crime vehicle are jointly and severally liable to the pay the compensation.

13. For the foregoing discussion, I am of the considered view that except the amount of compensation of Rs.20,000/- awarded by the Tribunal under the head of loss of estate, the amount of compensation awarded under the different heads as discussed supra, namely, Rs.10,000/- towards grievous injuries, Rs.25,000/- towards pain and suffering, Rs.10,000/- towards medical expenses, Rs.1,72,000/- towards 40% disability, and Rs.12,200/- towards transportation and extra nourishment, totaling to Rs.2,30,000/- (Rs.2,50,000-20,000) is held to be just, legal, valid and do suffer from any legal infirmities warranting interference.

14. Accordingly the appeal is partly allowed with proportionate costs, setting aside and modifying the Award and decree dated 05.04.2007 passed in OP.No.1814 of 2011 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad and consequently awarding Rs.2,30,000/- with interest at 7.5% per annum from the date of petition i.e. 18.10.2001 till the date of deposit, and holding that the appellant-Insurance Company and second respondent-owner of the crime vehicle jointly and severally liable to pay the compensation..

15. The appellant/Insurance company is directed to deposit the compensation awarded hereinabove, with interest and proportionate costs, within one month from the date of receipt of a copy of this judgment, adjusting the amount if any already paid, within one month from the date of receipt of a copy of this judgment.

16. On such deposit being made, the first respondent/claimant is permitted to withdraw the same.

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

JUSTICE N. BALAYOGI

DATED 01st August, 2018.
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