THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.4468 of 2004

JUDGMENT:

Having not been satisfied with the quantum of compensation awarded, the claimant preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) assailing the order/award, dated 30.08.2004, in OP.No.1072 of 2002 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge(II Fast Track Judge), Nalgonda.

2. I have heard the submissions of the learned counsel for the appellant/claimant ('the claimant' for brevity) and the learned counsel for the 2nd respondent/insurance company ('insurance company' for brevity). This appeal against the 1st respondent/owner-cum-insured was dismissed for default. Even though the appeal is dismissed against the owner-cum-insured of the vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company in view of a judgment of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others[1].**

---

[1] 2001(1) ALD 453 (DB)

3. The points that arise for determination are:

Whether the compensation awarded by the Tribunal is not reasonable, just and fair in the facts and circumstances urged by the claimant? And, if so, what shall be the reasonable, just and fair compensation to be awarded to the claimant? To what relief?

4. POINTS:

4.1 The case of the claimant on the relevant aspect may be stated, in brief, as follows: - 'He is of 50 years of age and was earning Rs.5,000/- per month on agriculture as on the date of accident. In the subject accident, he sustained grievous injuries including fracture of bones of left leg and he was immediately shifted to Kamineni hospital, Narketpally, and was admitted into the said hospital for medical treatment. Despite treatment, he has not recovered from the fracture injury. He was undergoing treatment till the date of filing of the claim petition. He could not attend to any work including agricultural operations. He is suffering from pain. He is not in a position to attend to agricultural operations on account of the fracture injury. He became permanently disabled. Hence, the claim petition is filed requesting to award a compensation of Rs.75,000/-.'

4.2 The defence of the insurance company is in the nature of total denial; and, the insurance company had put the claimant to strict proof of the averments in the petition and his entitlement to the claim.

4.3 Before the Tribunal, the claimant was examined as PW1 and exhibits A1 to A6 were marked on the side of the claimant. No oral and documentary evidence was adduced on the side of the 2nd respondent insurance company.

4.4 On merits, the Tribunal by the award impugned in this appeal partly allowed the claim petition and awarded a compensation of Rs.5,000/- with interest at 9% per annum from the date of the petition till date of deposit along with proportionate costs and fastened joint and several liability on the respondents to pay the said compensation. The claimant, who is not satisfied with the said compensation amount awarded, preferred this appeal.

4.5 At the hearing, learned counsel for the claimant submitted as follows: - 'The Tribunal failed to appreciate that the claimant sustained fracture of bone of his left leg besides other injuries and that immediately after the accident he was admitted into Kamineni hospital, which is a private hospital, and received treatment and that he spent huge amount on his treatment and medicines. The Tribunal erroneously held that from the contents of the medical report/exhibit A2, it is difficult to come to a conclusion as to the kind of injury sustained by the petitioner and that it is a vague report. The report of the medical officer which was given on examining the injured claimant discloses that the injury sustained is as follows: 'The lower end of tibia and fibula coming out of accidental wound on medial side of leg & ankle.' The said report also discloses that the injury is certified as 'grievous injury'. The said description of the injury shows that the injury sustained is a bone-deep injury and that the bones of the left leg are exposed on account of the injury. The Tribunal ought to have seen that such an injury takes a long time for heeling. Therefore, the Tribunal ought to have awarded reasonable amount towards medical expenses and also reasonable compensation under the head 'loss of earnings (past & present). The Tribunal has not awarded any compensation towards medical expenses though the claimant had spent more than Rs.6,000/- on his medicines and exhibited exhibit A6-bunch of medical bills. The Tribunal failed to note that the claimant/PW1 deposed that he sustained fracture of bones of left leg and that he suffered partial permanent disability. By any standards the awarded compensation of Rs.5,000/- is a meagre and unfair compensation.

5. On the other hand, the learned counsel for the insurance company contended that the claimant sustained only one injury and that the medical report does not show that the said injury is a fracture injury and that the claimant has not examined a Doctor who has treated him and that the claimant did not even file a disability certificate and that no medical prescriptions are also filed and that in the facts and circumstances of the case, the Tribunal had correctly considered the facts and evidence and had accurately determined the compensation and that the compensation awarded is just, reasonable and fair and that in the facts and circumstances of the case, the contentions raised in the appeal of the claimant are devoid of merit and that the appeal is liable to be dismissed.

6. I have given earnest consideration to the facts and submissions. As regards the occupation, income and other allied aspects, the case of the claimant is that he was hale and healthy as on the date of the accident and that he used to do agriculture and earn Rs.5,000/- per month and that in the subject accident, he sustained fracture injury to the bones of left leg and was hospitalised and that therefore he could not attend to agricultural work and that the injuries resulted in permanent partial disability. The case of the insurance company is that the petitioner sustained only one injury and failed to examine the Doctor, who treated him and further failed to substantiate the claim by filing medical prescriptions and disability certificate.

7. A perusal of the evidence brought on record including exhibit A2, which is a requisition to the Medical Officer, Kamineni Institute of Medical Sciences for examination of the injured person along with the report of the medical officer furnished on examination of the injured claimant, would show that the petitioner sustained the following grievous injury: 'The lower end of tibia and fibula coming out of accidental wound on medial side of leg & ankle.' However, the petitioner did not file x-ray film, if any, and did not examine the Doctor who treated him in support of his plea that he suffered fracture injury.

8. The above analysed evidence on record would show that PW1/the claimant who was of 50 years of age had suffered an injury to the skin and flesh, which is bone-deep and that the said injury exposed the bones of the left leg on the medial side. Hence, for the said injury, a sum of Rs.15,000/- is awardable as compensation and the same is accordingly awarded. It is common knowledge that even simple injuries cause painful experience to the victim. The shock, pain and suffering at the time of accident; pain, discomfort and inconvenience during the period of treatment can be visualised taking into consideration the day to day human experience. Therefore, a sum of Rs.10,000/- is awardable under the heads 'shock', 'pain and suffering' and the same is accordingly awarded.

9. As regards the claim in regard to hospital, medical, transport, extra nourishment and other incidental expenses, though the appellant-claimant contends that he spent Rs.6,000/-, there is no evidence brought on record as to the nature and period of inpatient & out patient treatment though a bunch of medical bills under exhibit A6 for a sum of about Rs.4,500/- are filed without corresponding prescriptions. In a decision in **Managing Director, APSRTC**

v. Kathavath Gopal and another[2] this Court had held that compensation towards expenditure incurred on extra nourishment and transport cannot be denied even though treatment was given in Government Hospital and one cannot expect positive evidence proving actual expenditure and hence, some reasonable hypothesis cannot be ruled out. Hence, an amount of Rs.3,000/- is awarded under the heard 'hospital, medical, transport, attendant and incidental charges'.

10. Coming to the claim under the head 'loss of earnings (past and present)', the claimant's case is that he used to do agriculture work and earn Rs.5,000/- per month and that due to the treatment he received in the hospital during the course of treatment, he lost his earnings. However, it is stated during the course of hearing that he is an agriculturist and not an agricultural labourer. As already noted, no evidence was adduced to show that he suffered any permanent partial disability. Hence, no other compensation amounts are awardable to the claimant in the facts and circumstances of the case.

11. Accordingly, the claimant is entitled to the following compensation amounts:

Sl. No.	**Head of compensation**	**Amount (in Rs.)**
(1)	Injuries	15,000/-
(2)	shock, pain and suffering	10,000/-
(3)	Hospital, medical, attendant, transport and incidental charges	3,000/-
	Total	28,000/-

(Rupees Twenty Eight Thousand only)

[2] 2003(5) ALD 198

The claimant claimed compensation of Rs.75,000/-. The compensation already awarded by the Tribunal is Rs.5,000/-. The total compensation now awarded is Rs.28,000/-. Thus, the additional compensation now awarded is Rs.23,000/-. Since the Insurance Company did not prefer any appeal assailing its liability to pay the compensation and the only question involved in this appeal is in regard to the quantum of compensation, there are no other issues to be adverted to and decided in this appeal. Therefore, it follows that the respondents 1 and 2 are jointly and severally liable to pay the additional compensation amount awarded to the claimant. The points are answered accordingly.

12. Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award simple interest at the rate of 7.5% per annum from the date of the claim petition till the date of payment or realisation as per the ratio in the decision in **Mohinder Kaur and others v Hira Nand Sindhi**[3] . On the compensation already awarded, the trial Court had granted interest at 9% per annum simple.

13. In the result, the appeal is partly allowed with proportionate costs and a total compensation of Rs.28,000/- (Rupees Twenty Eight Thousands only) is awarded to the claimant. Having regard to the facts and circumstances, the insurance company is directed to deposit before the Tribunal the enhanced portion of compensation i.e., Rs.23,000/- (Rupees Twenty Three Thousands only) with interest at 7.5% per annum simple from the date of the original petition till the date of deposit and also proportionate costs within two months from the date of the receipt of a copy of this judgment. The already awarded compensation or any portion thereof may also be deposited before the

[3] (2015) 4 SCC 434

Tribunal, if not already paid or deposited as per the award of the Tribunal. On such deposit of the amount before the Tribunal, the claimant is permitted to withdraw the entire amount including interest, if any, thereon and proportionate costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

01.02.2018
Vjl