THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.4505 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 24.08.2004, in MVOP.No.574 of 2000 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur.

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].

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?**

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

4. POINTS:

4.1 The case of the claimant on the relevant aspect may be stated, in brief, as follows: - 'She was of 35 years of age and was earning Rs.50/- per day as on the date of the accident; in the subject accident, she sustained several injuries; she was first taken to Government Hospital, Narasaraopet; after giving first aid she was shifted to private nursing home of Dr.Kadiyala Venkateswara Rao, Narasaraopet; she took treatment as inpatient in the said hospital; she sustained partial permanent disability; hence, she could not attend to coolie work; therefore, she is entitled to a compensation of Rs.85,000/-.'

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 her entitlement to the claim.

4.3 Before the Tribunal, the claimant and the doctor who issued the wound certificate to the claimant were examined as PWs1 and 2 and exhibits A1 to A5 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.34,500/- 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 to her right clavicle, laceration on right eye brow and abrasions all over the body. By considering the nature of injuries and duration of treatment, the Tribunal ought to have awarded just compensation under the head 'pain & suffering'; the compensation awarded under the said head is too meagre when compared to the gravity of injuries sustained by the claimant. The Tribunal failed to appreciate that the claimant was hospitalised for about three weeks. Basing on the said period, it ought to have awarded just compensation towards attendant charges, extra nourishment, transportation and other incidental expenses during the course of such treatment. The Tribunal erred in not awarding any compensation towards loss of earnings. The Tribunal ought to have seen that the movements of her right shoulder are restricted and that she has to live with the said disability for the rest of her life; the Tribunal erred in not awarding compensation towards loss of amenities of life. The Tribunal ought to have awarded interest @ 12% per annum instead of @ 9% per annum.'

5. On the other hand, the learned counsel for the insurance company contended that 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 her occupation, income and other allied aspects, the case of the claimant is that she was hale and healthy as on the date of the accident and that she used to do coolie work and earn Rs.50/- per day and that in the subject accident, she sustained severe injuries and was hospitalised and that therefore she could not attend to coolie work and that the injuries resulted in 10% permanent partial disability. The case of the insurance company is that the petitioner sustained simple injuries. A perusal of the evidence brought on record including exhibit A5, copy of wound certificate issued by PW2, would show that the claimant sustained the following injuries: (1) fracture of right clavicle; (2) laceration on right eyebrow; and, (3) abrasions all over the body. PW2, the Doctor, in his testimony stated as follows: 'The claimant who suffered the above injuries was admitted into his hospital, on 09.05.2000 and was discharged on 29.05.2000; he applied clavicle bandage to the clavicle; the claimant paid Rs.15,000/- to him towards treatment charges; the claimant suffered 10% disability; the said disability is partial and permanent; movements of her right shoulder are restricted; and it is difficult for her to lift weights with her right hand and do hard work.' In his cross examination he stated that the claimant can attend to her normal duties but she cannot lift weights and cannot do labour work; but she can attend to labour work with difficulty. He denied the suggestion that the disability stated by him is on the higher side and that the disability suffered by PW1 is not permanent in nature. He admitted that he did not issue any bills to PW1 for the charges he received from her. The above analysed evidence on record would show that PW1/the claimant who was of 35 years of age had suffered one fracture injury and one laceration besides abrasions all over her body and that the fracture injury was treated conservatively. Therefore, for the said fracture, a sum of Rs.20,000/- is awardable as compensation and the same is accordingly awarded instead of Rs.15,000/- awarded by the Tribunal. A compensation of Rs.1,500/- can be awarded for the other injury, viz., laceration. Further, for the abrasions all over the body, a sum of Rs.2,500/- is awardable and the same is accordingly awarded. The shock, pain and suffering at the time of accident; pain, discomfort and inconvenience during the period of treatment, hospitalisation, bed rest and physiotherapy can be visualised taking into consideration the day to day human experience. Therefore, a sum of Rs.20,000/- is awardable under the heads 'shock', 'pain and suffering' and the same is accordingly awarded.

7. As regards the claim in regard to hospital, medical, transport, extra nourishment and other incidental expenses, this court is of the considered view that the sum of Rs.15,000/- awarded by the Tribunal is just and reasonable and needs no further enhancement.

8. Coming to the claim under the head 'loss of earnings (past and present)', the claimant's case is that she used to work as a coolie and earn Rs.50/- per day and that due to the treatment she received in the hospital during the course of treatment, she lost her earnings. Even simple injuries cause painful experience to the victim and take a minimum of two to three weeks' time for complete healing. Major injuries like fractures take 4 to 6 weeks or 6 to 8 weeks time for total healing depending upon the nature of fracture and other factors. A further time of one or two months is generally required for physiotherapy and getting normal movements. People who are required to attend labour work must be of perfect health; otherwise, they cannot attend to such hard work. In this case, PW1 suffered fracture of right clavicle and received treatment from 09.05.2000 to 29.05.2000. Hence, it is reasonable to accept that she was out of work at least two months completely. Hence, Rs.3,000/- is awarded under the head of 'loss of earnings (past and present)'. Since the disability is bare minimal and the disability has not impacted her ability to attend to her normal work and also labour work if not hard labour work, no compensation need be awarded towards 'loss of future earnings.'

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

Sl. No.	**Head of compensation**	**Amount (in Rs.)**
(1)	Injuries	24,000/-
(2)	shock, pain and suffering medical expenses	20,000/-
(3)	Hospital, medical, extra nourishment, attendants', transport and incidental charges including future	15,000/-
(4)	Loss of earnings (past and present)	3,000/-
	Total	62,000/-

(Rupees Sixty Two Thousand only)

The claimant claimed compensation of Rs.85,000/-. The compensation already awarded by the Tribunal is Rs.34,500/-. The compensation now awarded is Rs.62,000/-. Thus, the additional compensation now awarded is Rs.27,500/-. 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 point is answered accordingly.

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**[2] . On the compensation already awarded, the trial Court had granted interest at 9% per annum simple.

10. In the result, the appeal is partly allowed with proportionate costs and a total compensation of Rs.62,000/- (Rupees Sixty Two 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.27,500/- (Rupees Twenty Seven Thousands and Five Hundred only) with interest at 7.5% per annum simple from the date of the original petition till the date of deposit and also 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 Tribunal accordingly, 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

24.01.2018
Vjl

[2] (2015) 4 SCC 434