

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.4125 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 23.08.2001, in OP.No.452 of 1998 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Nalgonda.

2. I have heard the submissions of the learned counsel for the appellant/claimant ('the claimant' for brevity) and of the learned counsel for the 2nd respondent/insurance company ('insurance company' for brevity).

2.1 In this appeal, this Court, on 08.02.2016, passed the following order: - 'Respondent No.1 is the owner of vehicle. In view of the judgment of this Court, it is not necessary for the claimant to serve respondent No.1 as he remained *ex parte* before the Tribunal....' In view of the said orders of this Court, no fresh notice was taken to the 1st respondent-owner/insured after notice once sent was returned unserved. Even in a case where an appeal of the present nature stands 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. This is so 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?

4. **POINTS:**

4.1 The case of the claimant on the relevant aspect may be stated, in brief, as follows: - 'He was hale and healthy prior to the accident. He used to earn Rs.7,000/- per month on his job. Due to the fracture injuries to his right leg & shoulder and other serious injuries received by him in the subject accident, he became permanently disabled to do his job. He is the sole bread winner of the family. After the accident, the entire family starved for livelihood and basic necessities. He spent an amount of Rs.50,000/- on medicines and his treatment. Hence, the claim petition is filed requesting to award a compensation of Rs.1,50,000/-.'

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 A7 were marked on the side of the claimant. No oral and documentary evidence was adduced on the side of the 2nd respondent - insurance company.

¹ 2001(1) ALD 453 (DB)

4.4 On merits and by the award impugned in this appeal, the Tribunal partly allowed the claim petition and awarded a compensation of Rs.70,000/- with interest at 12% 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 compensation awarded by the Tribunal is very low. The Tribunal erred in not awarding any compensation towards loss of earnings, that is, for a period of two (02) months during which the claimant was on sick leave. After retirement, the claimant would have been in a position to supervise agricultural work and he would have earned Rs.18,000/- per annum on the said work, had he not suffered the disability on account of the injuries sustained in the accident. Therefore, the Tribunal erred in not awarding any compensation towards loss of future earnings. The Tribunal failed to appreciate that the claimant received treatment for months together. Basing on the same, the Tribunal ought to have awarded just compensation towards extra nourishment and other incidental expenses. Therefore, the award under appeal is liable to be modified. The claimant may be awarded compensation as claimed in the claim petition.’

5. On the other hand, the learned counsel for the insurance company first 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. He next pointed out that no leave record and inpatient record, if any, are filed by the claimant and that a Doctor, who treated the claimant, was not examined and further contended that none of the

averments made in support of the various claims are established and that the contentions raised in the appeal are devoid of merit and that having regard to facts & circumstances of the case and the evidence available on record, the appeal is liable to be dismissed.

6. I have given earnest consideration to the facts and submissions.

7. 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 earn Rs.7,000/- per month on his job and that in the subject accident, he sustained severe injuries and was hospitalised and that his right leg and right shoulder are permanently disabled due to fracture injuries and that therefore he could not attend to his job and suffered loss of earnings and that he spent huge amounts on medicines, treatment, extra nourishment etcetera. Per contra, the case of the insurance company is that the petitioner sustained simple injuries.

7.1 In support of the claim, the claimant exhibited the following documents:

A1: Attested Photostat copy of FIR in Cr.No.2/97 of Kattangur Police Station. A2: Attested Photostat copy of injury certificate. A3: Attested Photostat copy of charge sheet. A4: Discharge summary of Sainath Hospital, Hyderabad. A5: Certificates issued by Dr.K.V.Shivaram Krishna of Sainath Hospital. A6: Bunch of medical bills (39 Nos.). A7: X-ray films (6 Nos.).

7.2 Dealing with the injuries and the treatment received by the claimant, it is to be first noted that the claimant received treatment in Government Hospital, Nalgonda, for three days. Exhibit A5 certificate issued by Dr.K.V.Shivaram Krishna of Sainath hospital reflects that he treated the claimant for Polytrauma

to the right clavicle, right 8th rib and infected right heel wound and advised the claimant to take rest for 6 weeks from 04.01.1997. Exhibit A4 discharge summary reflects that the claimant was admitted into the said hospital, on 15.01.1997, and was discharged on 18.01.1997. Exhibit A2, attested photostat copy of the wound certificate, on a perusal would show that the claimant sustained the following injuries: (1) laceration 3 x ½ x ½” on right parietal region of the head; (2) multiple abrasions 1 x 1” on parietal region; (3) laceration at the skin 5 x ½ x 1/8” on right heel; and, (4) swelling on the right collar region 1 x 1”. Though the claimant claims that he took treatment from Sainath hospital, L.B. Nagar, Hyderabad, for a period of two (02) months and spent about Rs.50,000/- towards medical expenses and was on leave for about one year, no evidence is brought on record as to the nature and period of inpatient & out patient treatment though a bunch of medical bills under exhibit A6 are filed without corresponding prescriptions. No leave record and certificate from his employer are filed to show the period and nature of leave availed and the loss of pay, if any, suffered during the alleged period of treatment. In this back drop and in the light of the evidence available on record, the Tribunal having taken into consideration all the circumstances, awarded Rs.60,000/- under the head ‘injury, pain and suffering’ and Rs.10,000/- towards medical expenses. No disability certificate is filed. As noted no doctor is examined. No record is filed to show that the injuries sustained and disability, if any, suffered impacted his earning capacity. Thus no evidence, much less evidence of reliable character is adduced to either accept any of the contentions of the claimant or to accept the plea that the compensation awarded by the Tribunal is not just and reasonable or fair. On a careful analysis of the facts, evidence and contentions, this Court finds that the

sum of Rs.70,000/- awarded by the Tribunal is just and reasonable and needs no further enhancement in the facts and circumstances of the case. Points are accordingly answered against the claimant/appellant.

8. In the result, the appeal is dismissed. No costs.

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

M. SEETHARAMA MURTI, J

14.02.2018

Vjl

