

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No. 1664 OF 2010

JUDGMENT:

1. The appellant/claimant preferred this appeal aggrieved by the Award and decree 17.04.2010 passed in OP.No. 852 of 2007 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-VI Additional District Judge (FTC) Nizamabad, at Kamareddy, whereby the Tribunal awarded compensation of Rs.6,000/- with interest at 6% per annum from the date of petition i.e. No. 10.10.2007 till the date of deposit and proportionate costs, and, directed the first and second respondents jointly and severally pay the compensation within one month from the date of Award with interest accrued thereon.

2. The contention of the appellant/claimant is that the Tribunal having found that the accident occurred due to rash and negligent driving of the driver of the Maruti Zen car ought to have awarded full claim. The Tribunal without considering the nature of injuries suffered by the appellant/claimant/P.W.1 simply awarded Rs.3,000/- treating it as simple in nature which is not sustainable. The Tribunal failed to consider that the appellant/claimant suffered permanent disability and hence it should have awarded compensation towards the same.

3. Brief facts of the case of the appellant are that on 5.7.2005 while P.W.1 was going to fetch drinking water on his Bajaja Pulsar motor cycle from the bore situated at Mythri Petrol

Pump and when he reached in front of the B.Ed. college ground, Kamareddy, the driver of the Maruthi Zen Car bearing No. AP 28AA.0010 being driven in rash and negligent manner caused the accident, in which the appellant/claimant suffered multiple injuries. Immediately after the accident, he was taken to the Government Hospital, Kamareddy and after giving first aid, he was referred to Gandhi Hospital, Secunderabad. He incurred Rs.60,000/- towards medical expenses.

4. Prior to the accident, the appellant/claimant was hale and healthy and was working as Computer Operator earning Rs.10,000/- per month. After the accident, due to the fracture, he was unable to attend the job regularly and lost his earning capacity.

5. The second respondent filed written statement contending that the driver of the car bearing No. AP 28AA 0010 was never drove the said vehicle in rash and negligent manner and caused the accident. The driver of the said car is a proper and necessary party. The driver had not holding valid and effective driving licence as on the date of the accident and that the said vehicle was not having valid permit and road worthy to ply. The first respondent is not the registered owner of the car involved in the accident.

6. Based on the rival contentions, the Tribunal framed the following issues for trial:

- a) Whether the accident occurred on account of rash and negligent driving of the Car bearing No. AP 28AA.0010 ?
- b) Whether the petitioner is entitled for compensation and if so to what amount and from which of the respondent ?
- c) To what relief ?

7. In support of the respective claims, on behalf of the appellant/claimant, P.W.1 was examined and Exs. A.1 to A.10 were got marked. On behalf of the respondent, R.W.1 was examined, no documentary evidence was adduced on their behalf.

8. Now the point that arises for determination in the present appeal is: *whether the Tribunal failed to appreciate the oral evidence of P.W.1 and documentary evidence at Exs. A.1 to A.10 in proper perspective and whether the award suffers from any legal infirmities.*

9. Learned Counsel for the appellant contended that the Tribunal has not properly appreciated the oral and documentary evidence and thereby granted meagre amount of compensation. The Tribunal failed to award compensation under the heads of loss of earnings, transportation, pain and suffering, extra nourishment, permanent disability etc.

10. Since the claimant is the appellant, the finding of the Tribunal with regard to the rash and negligent driving on the part of the offending vehicle does not warrant interference. However, for the proper appreciation, I felt it necessary to discuss the evidence of P.W.1 and documentary evidence adduced in respect of the rash and negligence.

11. The appellant/claimant was examined as P.W.1. To support rash and negligent driving on the part of the driver of the offending vehicle, and injuries sustained by him (P.W.1), his evidence is that on 5.7.2005 at about 6.30 PM while he was going water on his Baja Pulsar motor cycle to fetch drinking from the bore situated at Mytri Petrol Pump and when he reached in front of the B.Ed. college ground, Kamareddy, the driver of the Maruthi Zen car bearing No.AP 28AA.0010 being driven in rash and negligent manner, with high speed, dashed against the motor cycle on which the appellant/claimant was proceeding. During the cross examination, it was revealed that the father of the appellant/claimant gave complaint Ex.A.1 wherein it was specifically asserted that the vehicle bearing No.AP 28AA 0010 was involved in the accident while his son was driving the motor cycle to fetch the water. The Investigating Officer after thorough investigation filed the charge sheet against Mr. Syed Saidoddin driver of the Maruthi Zen car bearing AP 28AA 0010 finding that the driver of the said car having driven in rash and negligent manner, at high speed dashed the motor cycle of P.W.1, due to which, he fell down and suffered injuries.

12. Though the second respondent contended that the said vehicle was not involved in the accident and there is no rash and negligence on the part of the driver of the said car, he did not choose to examine the driver of the car and adduce any evidence. The driver of the offending car is the proper person to speak about

the manner in which the accident occurred. But the respondents having taken the plea failed to adduce any rebuttal evidence to the evidence of P.W.1 and documentary evidence at Exs. A.1 and A.2. In the absence of any such rebuttal evidence, I am of the considered view that the Tribunal came to the right conclusion that the driver of the Maruthi Zen Car bearing AP 28 AA 0010 being driven in rash and negligent manner, at high speed, caused the accident.

13. It is contended by the second respondent that the Tribunal ought to have consider that the driver of the offending vehicle/Maruthi Zen Car, who is the proper and necessary party, was not made as party to the claim petition and hence the claim petition is not maintainable. It is pertinent to note that the driver of the offending car is not the proper and necessary party because the owner of the car is arrayed as respondent. The owner of the vehicle is vicariously responsible for the act of negligence on the part of the driver. In this regard, the law is settled that the driver is not a necessary party. Neither Section 110-A of the Act nor the rules framed there- under contemplate impleading the driver as a party. The owner of the vehicle will be vicariously liable for the act of negligence on the part of the driver and when once that is established, the owner of the vehicle becomes squarely liable to pay the compensation and if there is an insurer, by virtue of the indemnity clause in the insurance policy, the insurer becomes liable. Moreover the scheme of the Act in Chapter XI and the rules

framed thereunder do not indicate as to who are the necessary parties or proper parties.

14. With regard to the injuries, there is evidence of P.W.1, who deposed that he sustained fracture of left temporo parietal bone, grievous injury on right leg, grievous head injury and fracture of nasal bone, fracture of ribs and injuries on other parts of the body. Immediately after the accident, he was shifted to the Government Area Hospital, Kamareddy for treatment and thereafter referred to Gandhi hospital, Secunderabad for expert treatment, wherein he was in-patient from 5.7.2005 to 18.7.2005. As a result of the injuries sustained in the accident, he became permanent disable due to which he could not move. To substantiate the same, he filed Ex. A.6 discharge card which shows that P.W.1 was admitted in the Gandhi Hospital, Secunderabad on 5.7.2005 and discharged on 18.7.2005, and in Ex.A.6 only one injury was noted, namely, right temporo external haemorrhagic. Ex.A.7, medical bills, shows the expenditure incurred towards medicines and treatment. Ex.A.8, CT scan report shows fracture of right temporal bone and Ex.A.9, X-ray films show extra dural haemorrhage left temporal and parietal region, fracture left temporal and temporo parietal bone.

Therefore the evidence of P.W.1 supported by Exs.A.6, A.8 and A.9 go to suggest that P.W.1 sustained only one fracture of temoral and temporo parietal bone. Ex.A.10 is the case sheet which shows that he took treatment in the Gandhi Hospital,

Secunderabad. The evidence of P.W.1 supported by Exs. A.7 to A.10 goes to suggest that P.W.1 sustained fracture of temporal bone, which is grievous in nature and he took treatment from 5.7.2005 to 18.7.2005 for a period of thirteen days as inpatient. He incurred medical expenses covered by Ex.A.8 medical bills.

15. The proper person to speak about the injuries sustained by the appellant/claimant is the doctor who treated him. But he was not examined. Though P.W.1 became permanent disable, he did not produce any documentary evidence in support of his claim. Though P.W.1 deposed that he sustained grievous injuries and suffered permanent disability and incurred Rs.60,000/- for medical expenses, Ex.A.6 does not show any such disability. Therefore I am of the considered view that the evidence of P.W.1 supported by Exs. A.6 to A.10 go to suggest that he sustained grievous injury, and, there is no iota of evidence showing any permanent disability.

16. The appellant/claimant filed Ex.A.3 driving licence and Ex. A.4 RC of Maruthi Zen Car bearing No. AP 28AA 0010, according to which, the first respondent is the registered owner of the said car. The driver possessed valid and effective driving licence to drive the motor vehicle. Ex.A.3 goes to suggest that the driver of the offending car has licence to drive light motor vehicle. Admittedly Marthi Zen car bearing No. AP 28 AA 0010 is a light motor vehicle.

17. Absolutely no rebuttal evidence was adduced by second respondent to show that the Maruthi Zen car bearing No. AP 28 AA 0010 was not involved in the accident and that the driver of the said vehicle did not possess valid and effective driving as on the date of the accident. Non possessing the driving licence is the root cause for the accident. More over, P.W.1 is the injured, who filed Ex. A.3 driving licence of the driver of the offending vehicle, and Ex. A.4 RC book of the offending car. In the absence of rebuttal evidence, the second respondent failed to establish that the driver of the offending car bearing No. AP 28 AA 0010 had not valid and effective driving licence at the time of accident and the vehicle has not valid permit to ply as on the date of the accident.

18. In view of the same, I am of the opinion that the second respondent failed to establish that the driver of the Maruthi Zen car bearing AP 28 AA 0010 had no valid and effective driving licence and the said car has no valid permit to ply and road worthy as on the date of the accident.

19. Admittedly the first respondent is the registered owner of the Maruthi Zen car bearing No. AP 28 AA 0010 as on the date of the accident. Ex.B.1/Ex.A.5 is the insurance policy issued for the said car, under which, the first respondent was the insured whereas the second respondent was the insurer and the said policy was in force with effect from 24.06.2005 to 23.06.2006 whereas the accident occurred on 5.7.2005, by which date, the

policy Ex.B.1/A.5 was in force. By virtue of Ex.B.1/A.5, the second respondent has to indemnify the liability of the first respondent. Though the evidence of P.W.1 and Exs. A.6 to A.10 establish that P.W.1 sustained fracture right temporo external haemorrhagic bone which is grievous in nature, the Tribunal awarded Rs.3,000/- holding that the injury sustained by P.W.1 was simple in nature. The fracture to right temporo external haemorrhagic bone is not simple in nature, but it is grievous injury and therefore award of Rs.3,000/- towards the fracture injury is very meagre, and it requires modification and suitable enhancement. Similarly the Tribunal awarded Rs.3,000/- towards medical expenses though P.W.1 took treatment for thirteen days as in patient, that too, having suffered fracture to right temporo haemorrhagic bone. Therefore, the compensation towards medical expenses requires enhancement by modifying the award. Accordingly I find that the compensation awarded by the Tribunal is very meagre and it requires modification.

20. In the facts and circumstances discussed herein above, it is clearly established that the accident occurred due to rash and negligent driving of the driver of the Maruthi Zen Car bearing No. AP 28 AA 0010. In the accident, the appellant/claimant sustained fracture to right temporal bone, which is grievous in nature and it can therefore be said that he had certainly incurred expenditure towards transportation, extra nourishment, pain and suffering etc., Therefore, the award of the Tribunal is required to be modified accordingly.

21. In view thereof, I hereby award Rs.30,000/- towards fracture injury, Rs.10,000/- towards medical expenses, Rs.10,000/- towards pain and suffering, Rs.5,000/- towards transportation, Rs.5,000/- towards extra nourishment and Rs.1,000/- towards damages to cloths.

22. Further it is to be seen from the evidence of P.W.1 that he was working as Computer Operator earning Rs.10,000/- per month. In support of the same, no evidence was adduced. However, considering the fact that, while he was undergoing treatment for the injuries sustained in the accident, he suffered loss of income and hence, Rs.3000/- is hereby granted under the aforesaid head during the period of treatment in the hospital.

23. Thus, in all, the appellant/claimant is entitled to receive compensation of Rs.64,000/-.

24. For the foregoing discussion and in the result, the appeal is partly allowed, with proportionate costs while setting aside and modifying the Award and decree 17.04.2010 passed in OP.No. 852 of 2007 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-VI Additional District Judge (FTC) Nizamabad and awarding total compensation of Rs.64,000/- with interest at 7.5% per annum from the date of petition i.e. 10.10.2007 till the date of deposit,

25. By virtue of the insurance policy, Ex. A.5/B.1, the respondents are directed to deposit the compensation awarded

hereinabove jointly and severally, adjusting the amount if any already paid, within thirty days from the date of receipt of a copy of order.

26. On such deposit being made, the appellant/claimant is permitted to withdraw the said amount.

27. Advocate fee is fixed at Rs.2,000/-.

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

DATED 24th JANUARY, 2018.
Msnr_x



JUSTICE N. BALAYOGI