

THE HON'BLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No.375 OF 2011

JUDGMENT:

The appellant/claimant, aggrieved by the Award and decree, dated 28.09.2004, passed in O.P.No.5 of 2000 by the learned Chairman, Motor Accident Claims Tribunal – cum - I Additional District Judge at Nizamabad (for short, “the Tribunal”), awarding compensation of Rs.21,500/- with proportionate costs and interest at the rate of 9% per annum from the date of petition till the date of realization against respondent Nos.1 and 2 jointly and severally subject to the condition that respondent No.2 shall be entitled to recover the compensation so paid by it to the petitioner from respondent No.1, preferred this appeal.

2. On 07.07.1999, while the claimant was travelling in a lorry bearing No.AEK 9277 as labour from Kamareddy towards Nizamabad and when the lorry reached Mallupet shivar, the driver of the lorry drove it in a rash and negligent manner and in a high speed due to which the vehicle turned turtle and as a result, the claimant sustained fracture of left side clavicle bone and also 3rd, 4th and 5th ribs of left side and he also received injuries on other parts of the body. Immediately, the claimant was shifted to Government Hospital, Kamareddy and later, to Gandhi Hospital, Secunderabad.

3. Respondent No.2 filed written statement contending that the manner of accident and nature of injuries suffered by the claimant are incorrect; that the accident was not due to the rash and negligent driving of the driver of the offending lorry; that the driver

of the lorry was not having valid and effective driving license and that the amount claimed is excessive.

4. Basing on the pleadings of both the parties and on hearing, the Tribunal framed the following issues for trial:

- “1. Whether the accident was due to rash and negligent driving of the lorry bearing No.AEK 9277 by its driver?***
- 2. Whether the petitioners are entitled for compensation. If so, to what amount and against which of the respondent?***
- 3. To what relief?”***

5. In support of the claimant, P.Ws.1 and 2 were examined and Exs.A-1 to A-7 were marked. On behalf of the respondents, no oral evidence was adduced, but Ex.B-1 – copy of Insurance Policy was marked with consent.

6. Now the point that arises for determination is:-

“Whether the Award and decree, dated 28.09.2004, passed in O.P.No.5 of 2000 by the learned Chairman, Motor Accident Claims Tribunal – cum - I Additional District Judge at Nizamabad suffers from any infirmities and the same is liable to be set aside?”

7. **POINT:-** Learned counsel for the appellant/claimant contended that the Award is contrary to Section 140 of the Motor Vehicles Act, 1988 and under no fault liability, minimum amount should be Rs.25,000/-; that the Tribunal erred in not taking into consideration of the fact that the injuries mentioned in Exs.A-2 and A-3 are grievous in nature and should have granted just compensation; that the direction of the High Court not to depend solely upon the evidence of Dr.Narsinga Rao and Dr.Ramulu does not mean to discard their evidence in entirety and prays to allow the appeal.

Learned counsel for the appellant/claimant further contended that the Tribunal erred in granting Rs.5,000/- towards pain and suffering and Rs.3,000/- towards medical and incidental expenses and also in not awarding any compensation towards attendant charges, extra nourishment and transportation charges.

8. *Per contra*, learned counsel for respondent No.2/Insurance Company contended that the Award is legal; that the Tribunal rightly discarded the evidence of P.W.2 and awarded just compensation; that the impugned Award do not suffer from any legal infirmity and does not warrant interference of this Court and hence, prays to dismiss the appeal.

9. P.W.1 is the insured himself. His evidence is that on the date of accident, he was driving in a lorry bearing No.AEK 9277 as a labour under respondent No.1. The driver drove the lorry with high speed and could not control the speed due to which, the lorry turned turtle. During cross examination, he admitted that he worked as an Attender in the Judicial Department. There is a suggestion to P.W.1 that he was travelling as a fare paid passenger but not as a labour and the same was denied. Ex.A-1 is the certified copy of the F.I.R. and Ex.A-2 is the certified copy of the Injury Certificate. The driver of the lorry is the proper and material witness to speak about the manner in which the accident occurred. For the reasons best known to the claimant, he did not choose to examine him. It is not his case that the driver of the offending lorry bearing No.AEK 9277 is not available for examination.

10. The Tribunal, having considered the evidence of P.W.1 supported by Exs.A-1 and A-2, came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AEK 9277.

11. With regard to the injuries, there is evidence of P.W.1 and Ex.A-2 – Injury Certificate, which disclosed that P.W.1 received fracture to his left clavicle bone and also to his left side 3rd, 4th and 5th ribs and that he also sustained injury on abdomen and haemothroax. Ex.A-3 is the Discharge Summary. Therefore, the evidence of P.W.1 read with Exs.A-2 and A-3 will establish that P.W.1 sustained two grievous injuries and two simple injuries.

12. The evidence of P.W.2 – Dr.L.Ramulu was discarded because even as per the averments of Grounds of appeal, i.e., Ground No.7, the High Court directed not to solely depend upon the evidence of Dr.Narsinga Rao and Dr.Ramulu. The Tribunal, after elaborate discussion, discarded the evidence of P.W.2.

13. Ex.A-6 is the Disability Certificate issued by P.W.2. According to him, on 06.07.2001, he examined P.W.1 and found mal-united fracture of left clavical bone and restricted movement of shoulder, and mal-united fracture of 3rd, 4th and 5th ribs and accordingly, assessed the disability at 50%, which is also based on Ex.A-7 – X-ray. In the cross examination, P.W.2 admitted that he is not the doctor, who treated P.W.1. P.W.2 further admits that he issued Ex.A-6 – Disability Certificate in his private capacity and there is a Medical Board at Nizamabad. Admittedly, P.W.2 is not a member of the Medical Board, Nizamabad. There is a suggestion to P.W.2 that he issued Ex.A-6 enabling P.W.1 to get more

compensation and the same is denied. Ex.A-7 – X-ray do not contain the name of P.W.1. It is also the finding of the Tribunal that there are no X-ray films or radiologist report in support of the contention of the claimant that there was mal-union of fractured bones. That apart, P.W.2 is a stock witness who deposed in several cases of such nature and in such circumstances, the Tribunal did not believe the case of the claimant that he has been suffering from disability and therefore, it was not inclined to award any amount under the head “loss of future earnings” and also for the alleged disability. Such finding is legal in view of the decision of the High Court directing not to solely depend on the evidence of Dr.Narsinga Rao and Dr.Ramulu, who is P.W.2 herein.

14. According to the claimant, at the time of accident, he was travelling in the offending lorry as an employee under respondent No.1 but in the cause title, his occupation is shown as “Attender, MM Court, Kamareddy.” The Tribunal, to know the truth or otherwise, got the information from the District Court, Nizamabad to the effect that the claimant retired as Attender on 31.07.2000 while working as an Attender in Junior Civil Judge’s Court, Bichkunda on superannuation. In such circumstances, the contention of the claimant that he was travelling in the lorry on 07.07.1999 as an employee of respondent No.1 could not be appreciated. There is no evidence from the claimant’s side that on account of said injuries, he sustained loss of present earnings and therefore, the Tribunal was not inclined to award any amount under the head of “loss of present earnings” and held that he was travelling in the lorry at the time of accident as an unauthorized passenger.

15. The settled principle of law is that gratuitous passenger is not liable for compensation and the Insurance Company is absolved from its liability. Basing on a decision reported in 2004(3) ALT 61, the Tribunal directed the Insurance Company to pay the awarded compensation to the claimant and then to recover the said amount from respondent No.1/owner.

16. Admittedly, the claimant sustained two grievous injuries and two simple injuries as per Exs.A-2 and A-3 and the evidence of P.W.1. The Tribunal awarded only Rs.5,000/- each to two fracture injuries and Rs.1,500/- for the simple injury on left shoulder and Rs.2,000/- for the simple injury on the scalp under the head "injuries". The amounts awarded by the Tribunal are very meagre and even disproportionate to the settled law. The claimant, who sustained injuries, is entitled to a just compensation. Accordingly, to meet the ends of justice, I feel that it is just and proper to award Rs.30,000/- to each grievous injury and Rs.5,000/- to each simple injury, in total, Rs.70,000/- towards injuries. Besides that, the claimant is also entitled for a sum of Rs.5,000/- towards pain and suffering, another Rs.5,000/- towards medicines and another Rs.6,000/- towards attendant charges, extra nourishment and transportation charges. In all, the claimant is entitled for a compensation of Rs.86,000/- (Rupees eighty six thousand only) (i.e., Rs.30,000/- + Rs.30,000/- + Rs.5,000/- + Rs.5,000/- + Rs.5,000/- + Rs.5,000/- + Rs.6,000/-).

17. By virtue of Ex.B-1, which is in force as on the date of accident, and having considered that the claimant is a retired Attender, it is just and proper to direct respondent No.2 to pay the

compensation to the appellant/claimant at the first instance and then recover the same from respondent No.1 as held in the impugned Award.

18. Accordingly the appeal is partly allowed with proportionate costs and the Award and decree, dated 28.09.2004, passed in O.P.No.5 of 2000 by the learned Chairman, Motor Accident Claims Tribunal – cum - I Additional District Judge at Nizamabad is modified to the extent indicated hereinabove. Consequently, respondent No.2/Insurance Company is directed to deposit the total compensation of Rs.86,000/- together with interest at 9% per annum from the date of petition till the date of deposit, after deducting the amount if any already paid, within a period of thirty (30) days from the date of receipt of a copy of this judgment.

19. After deposit of the said compensation, respondent No.2/Insurance Company is at liberty to recover the said amount from respondent No.1/owner by treating the Award itself as decree.

20. On such deposit, the appellant/claimant is permitted to withdraw the said amount.

21. Advocate fee is Rs.2,000/-.

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

JUSTICE N. BALAYOGI

Date : 01.08.2018
AMD

THE HON'BLE SRI JUSTICE N. BALAYOGI



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