

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No. 2277 OF 2009

JUDGMENT:

1. The appellant/claimant preferred this appeal aggrieved by the Award and Decree dated 26.04.2007 in OP.No.1824 of 2003 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-VIII Additional District Judge, Nizamabad whereby a sum of 68,613/- with interest at 7.5% per annum from the date of petition till the date of deposit was awarded directing the respondents pay the said amount.

2. The contention of the appellant/claimant is that the Tribunal did not properly consider the evidence of P.Ws.1 to 3 and documentary evidence adduced in support of the claim and failed to see that the appellant is suffering with 30% permanent disability and he was hospitalized consequently for fifteen days for the injury sustained to Right Parito Temporal Region and other multiple injuries all over the body. Further contended that the Tribunal erred in not taking into account that the appellant unable to move from the bed and unable to walk without the help of an attendant and was an agriculturist and doing paddy business and he was earning Rs.20,000/- per month. The Tribunal also erred in not granting any amount towards damages to cycle and also erred in granting an amount of Rs.68,613/- towards the compensation against the claim of RS.4,00 lakhs and also not granting future medical expenses.

3. The claim of the appellant/claimant in brief is that the claimant filed the claim petition under Section 166 of the MV Act claiming compensation of Rs.4.00 lakhs. On 13.08.2003 at about 10.30 am when he was peddling the cycle from Dichpally towards Nizamabad side and reached in front of Railway Station, Dichpally, the RTC bus bearing No. AP 10Z.8629 being driven in rash and negligent manner and at high speed, came his behind, without blowing horn and dashed against him, due to which, he fell down and sustained injuries. Immediately after the accident, he was admitted in Government Headquarters Hospital, Nizamabad and thereafter he was referred to Hyderabad and he was treated in SVR Super Specialty Hospital, Hyderabad and his skull was operated. Still he is taking treatment in private hospital. So far he spend Rs.2.00 lakhs and he became permanent disabled. He was an agriculturist and also doing paddy business and earning Rs.20,000/- per month prior to the accident. He was aged 35 years as on the date of the accident.

4. Before the Tribunal, the second respondent-APSRTC filed written statement contending that the accident was due to rash and negligence of the appellant/claimant himself. On 13.08.2003 when the RTC bus reached Railway Station, Dichpally, some auto rickshaws were parked on the left side of the road and some donkeys were standing near the auto and at that time the appellant/claimant suddenly came on a cycle from the said group and hit the bus and fell down. Immediately the bus

driver stopped it and informed the same to the police, Dichpally but the petitioner managed the police and got issued the FIR against the driver of the bus. The appellant/claimant is more than 45 years and he was not having agriculture cum paddy business and he was not earning Rs.20,000/- per month.

5. Based on the rival pleadings, the Tribunal framed the following issues for settlement.

- a) Whether the accident has taken place due to rash and negligent driving of the vehicle bus No.AP 10Z 8629 by its driver ?
- b) Whether the petitioner is entitled for compensation ? If so, to what just amount and against whom ?
- c) To what relief?

6. In order to prove the respective claims, the appellant/claimant examined P.Ws.1 to 3 and got marked Exs. A.1 to A.12 on his behalf. On behalf of the respondents R.W.1 was examined and no documentary evidence was adduced.

7. Now the point that arises for determination is, *whether the findings, conclusions and process of assessing the compensation in the Award suffer from any legal infirmities warranting interference by this Court.*

8. The learned Counsel for the appellant/claimant contended that the Tribunal did not consider the evidence of P.Ws.1 to 3 and disability suffering by the appellant/claimant at 30% in proper perspective. The Tribunal erred in awarding meager amount of compensation.

9. On the other hand, the respondents contended that the Tribunal well appreciated the material on record and awarded just and reasonable compensation and that the award of the Tribunal do no suffer from any legal infirmities warranting interference.

10. The appellant/claimant himself was examined as P.W.1 and in proof of his income, he examined P.W.2. The evidence of P.W.1 is that on 13.08.2003 at about 10.30 am while he was driving the cycle from Dichpally towards Nizamabad side on the side of road and when reached in front of Railway Station, Dichpally on Hyderabad to Nizamabad road, at that time the driver of the APSRTC bus bearing No. AP 10Z 8629 came from behind without blowing horn, in rash and negligent manner and dashed to his cycle, due to which, he fell down and the front wheel of the bus ran over him, due to which, he received fracture and injuries to skull, both legs and hands, right parito temporal region, head injury and injuries on other parts of the body.

11. To substantiate rash and negligence, the appellant/claimant filed Ex.A.1 FIR wherein it was clearly asserted that on 13.08.2003 at about 10.00 am while he was proceeding on cycle to purchase fertilizers and when reached Railway Station, Dichpally, the APSRTC bus bearing No. AP 10Z 8629 came with high speed in rash and negligent manner and dashed the cycle. The Investigating Officer after thorough investigation filed charge sheet, Ex.A.2 against the driver of the RTC bus, D.Abbayah finding

that on 13.08.2003 at about 11.00 AM Dharmapuri Abbaiah/appellant-claimant, came to the Dichpally Railway Station area on his cycle from Mullangi village in order purchase fertilizers. When he reached near the fertilizer shop, the accused driver/R.W.1 of RTC bus bearing No. AP 10Z 8629 of Kamareddy depot, while coming from Kamareddy side and going towards Nizamabad, drove the bus in rash and negligent manner and dashed against the cycle of the said D.Abbaiah, on account of which, he sustained grievous bleeding injuries on his head and other parts of the body.

12. Against the evidence of P.W.1 and documentary evidence at Exs.A.1 and A.2, there is rebuttal evidence of R.W.1, driver of the APSRTC bus. His evidence is that on 13.08.2003 he performed the duty as a driver of the APSRTC bus bearing No. AP 10Z 8629 from Kamareddy to Nizamabad and when the bus reached the railway station of Dichpally, there were some auto rickshaws on the left side of the road and some donkeys also standing near the autos and at that time, the appellant/claimant came on a cycle suddenly from the said group of autos and donkeys from the left side to the front side of the bus and fell down on the road. Immediately he stopped the bus and informed the same to the police. But later on, the appellant/claimant managed the police and got issued FIR against RW.1 on the false complaint. During the cross examination, R.W.1 stated that the police registered the FIR against him and filed charge sheet. It was the express service bus and denied the suggestions that he

drove the bus in rash and negligent manner without blowing horn and without observing the passers on the road and that he himself dashed the appellant/claimant with front portion of the bus. When the evidence of P.W.1 supported by documentary evidence at Exs.A.1 and A.2 consistently prove that the driver of the bus drove it in rash and negligent manner and dashed the cycle of P.W.1, the oral evidence of R.W.1 is not sufficient to rebut the oral evidence of P.W.1 and supported documentary evidence at Exs.A.1 and A.2. If really PW1 reported the accident to the police and they registered the case against RW.1, the later (RW.1) should have send the complaint through post by RPAD or filed a private complaint. There is nothing suggestion in the cross examination of P.W.1 with regard to negligence on his part. The charge sheet further reveal that the driver himself surrendered before the Police Station and confessed voluntarily to have committed the offence and thereby the Investigating Officer arrested R.W.1 and released him on bail since the offence is bailable. The same is not denied by respondents.

13. In view of the above discussion, I am of the considered opinion that the finding of the Tribunal is legal and valid to the extent that the accident occurred due to rash and negligent driving of R.W.1/driver who drove the RTC bus bearing No.AP 10Z 8629 in rash and negligent manner and dashed against PW.1.

14. Ex.A.3 is the Medico legal record received from SVR Super Specialty Hospital, to which, CT scan of brain report vide Ex.A.6 referred on 13.08.2003 by Dr.S.S.Yadav of SVR Super Specialty Hospital is tagged. P.W.3 in his chief evidence deposed that basing on the information noted in the case sheet-Ex.A.12 and OP record like Ex.A.4-Medico Legal Record, Ex.A.5-Prescriptions, and Ex.A.9 Pathological reports he was diagnosed. At the time of admission, P.W.1 was unconscious. His CT scan of brain showed right temporo parietal acute subdural Hematoma and he was taken up for surgery on the same day for right temporo parietal craniotomy and evacuation of Hematoma were done post operatively. P.W.3 on clinically examining P.W.1 found that P.W.1 was having features of post traumatic syndrome along with seizures and cognitive dysfunction, which amounts to 30% disability. But suggestion is that disability 30% is excessive. In Ex.A.6 as well as during cross examination, P.W.3 stated that there is no external injury. Even after treatment, P.W.1 was suffering from fits while staying in the hospital and became drowsy. Ultimately the fits were controlled with medicines and his condition was improved substantially and thereafter he was discharged on 29.08.2003. The medical evidence under Exs.A.3 and A.12 supported by evidence of P.W.3 shows right temporo parietal acute subdural Hematoma. On the basis of Ex.A.6, P.W.1 undergone surgery for right temporo parietal craniotomy and evacuation of Hematoma were done. Hence P.W.1 is unable to walk and unable to attend to his normal duties.

15. The evidence of P.W.1 well establish that he was bedridden completely due to commuted fractures and injuries sustained in the accident. Even now also, P.W.1 is taking treatment. As per corroborative evidence of P.Ws.1 and 3, P.W.1 has to take further treatment and that the doctors advised him to under go further operation, for which, he requires to incur more than Rs.1,00,000/-.

16. The consistent corroborative evidence of P.Ws. 1 to 3 and documentary evidence at Ex. A.3 to 12 which were confronted through P.W.3 and further the evidence of PW.3 who is the proper person to speak about the disability, clearly establish that P.W.1 sustained Large Acute Subdural Haematoma right temporo parietal region with mass effect, subarachnoid haemorrhage—Cerebral congestion. . He was inpatient from 13.8.2006 to 29.8.2003. He was prescribed medicines and is still completely bed ridden and still he is taking treatment. However, having discussed the evidence of P.W.1 who clearly deposed that after the accident, his health has been deteriorated day by day and he is unable to walk and work, and suffered 100% disability, the Tribunal erroneously came to the conclusion that P.W.1 has not produced disability certificate showing cause of the injury sustained by him and inability to walk & work and rejected the contention of disability observing that though the claimant got elicited in the evidence of P.W.3 that he has got 30% disability, the evidence of P.W.3 in regard thereto does not inspire

confidence and that at the outset it may be stated that P.W.3 has not deposed that because of the injury sustained by the him on his head, the claimant is unable to walk and work. Further it is to be seen that though PW.3 deposed that on his clinical examination on the date of his evidence on 9.9.2006 at Hyderabad, he found post traumatic syndrome along with seizures and cognitive dysfunction which amounts to 30% disability, however, in the cross examination, as he admitted that he has not taken any CT scan on that day, the Tribunal observed that even without taking CT scan or any other x-ray, he came forward to certify disability at 30%. Such conclusion of the Tribunal in my considered opinion is perverse. There is nothing suggested to suspect the evidence of PW.3. Moreover respondents while cross examining P.W.3 only suggested that the disability of PW.3 is excessive, they have not suggested about the disability at all. In the absence of rebuttal evidence to the evidence of PW.3 and documentary evidence in Exs.A.3 to A.12, the finding of the tribunal that there is no sufficient evidence to prove the alleged disability of the appellant/claimant and therefore he has failed to prove with regard to 30% disability and that he is not entitled to claim the compensation towards loss of earnings is totally perverse. Such finding and conclusions regarding thereto are liable to be set aside and accordingly set aside. In view of the discussion made hereinabove, I am of the considered opinion that the appellant/claimant has suffered with post traumatic syndrome with seizures and cognitive dysfunction, due to which, he is unable

to walk and work and that even now he is continuing treatment and with the assistance of attendant he is attending nature calls and other works. The evidence of P.W.3 is thus reliable and trustworthy and inspires confidence and consistently proved by Exs.A.3,4,5,6,9,11 and 12 that P.W.1 has suffered 30% permanent disability. There is also no evidence from the side of the respondents to rebut that P.W.1 appointed one attendant to serve him by paying Rs.2,000/- per month.

17. With regard to the income of the appellant/claimant, there is the evidence of P.W.1, who deposed that P.W.1 was aged 35 years as on the date of accident and doing agriculture and also paddy business by raising commercial crops and seasonal vegetable business and earning Rs.,20,000/- per month. After the accident, his health was deteriorating day by day and unable to work and walk and got 100% permanent disability. His future earnings and amenities are affected and his life became miserable and due to commuted fractures, he became dependant on others for life long.

18. P.W.2 was the agriculturist. His evidence is that the injured/P.W.1 was aged 35 years and both are residents of one and the same village. He deposed that P.W.1 was an agriculturist and used to cultivate the lands by raising commercial crops and also doing paddy business and was earning Rs.20,000/- per month and used to contribute his entire income to the family.

During the cross examination he stated that he is not the Sarpanch of the village and knows the income of the villagers, however, he had not filed any documentary evidence. The only suggestion is that PW.1 was not earning Rs.20,000/- per month. However, it is not suggested that P.W.1 is not an agriculturist.

19. To substantiate that P.W.1 was holding lands, he filed Ex.A.10 Pattadar pass book wherein it was mentioned that he was having Patta No.282, registered on 5.5.1994 and continued to hold the same till 13.8.2003. . Ex.A.10 shows that he was the owner of Ac.2.10 guntas of land in Sy.Nos. 219/P.1,223/E.1, 525 and 572.

20. In the case of STATE OF HARYANA Vs. JSBIR KAUR {(2003) 7 SCC 484}, the Apex Court held that there is no material to adduce the type of land which the deceased possessed. Further the land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after the agriculture. Therefore the normal rule about the deprivation of income is not strictly applicable to cases where agriculture income is the source. Attendant circumstances have to be considered. Further more, there was no material before the Tribunal to arrive at the figure of Rs.4500/- per month. On merits, the monthly income of the deceased is fixed at Rs.3000/- per month.

21. In the case on hand, the Tribunal came to the conclusion that the claimant failed to prove disability at 30% and is not entitled to claim compensation towards future earnings. In view of the same, Ex.A.10, which is the copy of Pattadar Pass Book is of no avail. There is no discussion in the evidence of P.Ws. 1 and 2. in regard thereto. There is no rebuttal evidence or specific denial of Ex.A.10 or cross examination of P.W.1 with regard to Ex.A.10. Except suggestion that 'fabricated document for the purpose of claim' nothing favourable was elicited. The evidence of P.Ws.1 and 2 is that P.W.1 used to cultivate the commercial crops and used to do seasonal vegetables business and used to earn Rs.20,000/- per month. Ex.A.10 is the copy of Pattadar Pass book showing that P.W.1 owns land to an extent of Ac.2.10 guntas in different survey numbers. He did not file any document showing cultivation account and crops raised by him in the said lands.

22. It is clear from a reading of the decision of the Tribunal that it simply rejected Ex.A.10 saying that 'is of no avail'. Admittedly the appellant/claimant has not placed any material before the Tribunal to prove as to the crops raised and income fetched thereon. It is also evident that there was no material placed by him to show what type of land which the claimant possessed. Ac.2.10 gunats possessed by the claimant as per Ex.A.10 is still remains with the claimant. But the evidence of P.W.1 is that after the accident, his health was deteriorated day by day and he is unable to work and walk. Even in those

circumstances, there is possibility that the claimant may be required to engage persons to look after the agriculture. Normally the rule about the deprivation of income is not strictly applicable to this type of cases where agriculture income is the only source. There would not be any complete loss of income to the claimant, but there is only loss of perfection of which he may sustain loss to some extent, but not complete loss on agricultural income. Though P.Ws.1 and 2 deposed that by cultivation PW.1 used to earn Rs.20,000/- per month, absolutely there is no material before the Tribunal to come to a conclusion that the claimant used to earn Rs.20,000/- per month by cultivation of land and doing business.

23. In the light of the what has been discussed hereinabove, the income of the appellant/claimant can be fixed at Rs.3000/- per month. With regard to the age, there is no documentary proof. In the claim petition, his age was mentioned as 35 years. P.W.1 also deposed that he was aged 35 years. In Ex.A.1 FIR and Ex.A.2 Charge Sheet, the age of P.W.1 was mentioned as 37 ears whereas Exs.A,3,4,5,6,7,8,9 and 12, age of the appellant/ claimant was mentioned as 35 years. Having considered the evidence of P.Ws. 1 and 2 and age mentioned in the above documents, I consider it appropriate to take the age of the appellant/claimant as 35 years as on the date of accident. As per the decision of the Apex Court in Sarla Verma case, the relevant multiplier applicable for age group of 35 to 40 years is '16'. Then the normal compensation works out on account of loss

of dependence for 30% disability would come to Rs.3000/- x 12 x 16 x 30% = 1,72,800/-. Besides the same, the Tribunal awarded expenditure incurred by the appellant/claimant towards hospital bill at Rs.47,500/-, Rs.6,113/- towards medicines and Rs.15000/- towards grievous injury, which are reasonable, appropriate and do not warrant interference. Further, the appellant/claimant is entitled to receive Rs.10,000/- towards transportation, Rs.30,000/- towards extra nourishment and Rs.20,000/- towards pain and suffering. Further as the appellant/claimant is required to undergo further surgery in future, he is entitled to be awarded Rs.50,000/- towards operation and treatment. Thus, in all, the appellant/claimant is entitled to receive the total compensation of Rs.3,51,413/-. However, it is made clear that since the compensation is assessed towards permanent disability, no amount is required to be awarded towards loss of future earnings.

24. For the foregoing discussion and in the result, the appeal is partly allowed with costs, setting aside and modifying the Award and Decree dated 26.04.2007 in OP.No.1824 of 2003 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-VIII Additional District Judge, Nizamabad and awarding total compensation of Rs.3,51,413/- with interest at 7.5% per annum from the date of petition i.e. 09.12.2003 till the date of deposit.

25. The respondents are directed to deposit the total compensation as awarded hereinabove, adjusting the amount

already paid/deposited, within thirty days from the date of receipt of a copy of this order.

26. Advocate fee is fixed at Rs.2,500/-.

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

JUSTICE N. BALAYOGI

DATED 22nd JANUARY, 2018
msnr_x

