

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A. No.2167 of 2009

JUDGMENT :

The appellant/claimant aggrieved by the Award and Decree dated 18.10.2007 in O.P.No.476 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge at Gadwal, preferred this appeal.

2. The contention of the appellant is that the Tribunal ought to have granted the amount as claimed, because the appellant suffered fracture on left hand and dislocation of last two fingers of the palm, indicating permanent disorder. The amount awarded for each injury is very low and disproportionate.

3. The claim of the appellant in brief is as follows :

On 29.11.1999, while the petitioner was proceeding in auto bearing No.AP 22 T 8932 from Kurumurthy to Atmakur, at about 9.30 AM, the driver of the auto drove it with high speed and in rash and negligent manner, lost control and as a result, the auto turned turtle. The petitioner received fracture of his left hand and other multiple injuries.

4. The petitioner spent Rs.20,000/- towards medical, transport and extra-nourishment and he became permanently disabled to do any work and is suffering mental pain and agony. At the time of accident, as a Labourer, he was earning Rs.2,000/- per month. The respondents 1 and 2 are liable to pay the compensation.

5. The 2nd respondent – Insurance Company filed counter contending that the driver of the auto is not having valid and effective driving licence at the time of the accident. Further, the auto was overloaded, thereby he violated the terms and conditions of the policy.

6. The Tribunal having considered the pleadings and rival pleadings, settled the following issues for trial :

- 1] Whether the accident occurred due to rash and negligent driving of the Driver of Auto bearing No.AP 22 T 8932?
- 2] Whether the petitioner is entitled to claim compensation from the respondents, and if so, to what amount and against whom?
- 3] To what relief?

In support of the petitioner's contention, P.Ws.1 and 2 were examined and Exs.A1 to A4 were got marked. On behalf of respondents, R.W.1 was examined and Exs.B1 to B4 were got marked.

7. Now, the point that arises for determination is :

“Whether the order of the Tribunal suffers from legal infirmities warranting interference from this Court?”

8. Learned counsel for the appellant contended that the petitioner became permanently disabled and the Tribunal, without considering the material, awarded lesser amount than claimed.

9. On the other hand, the Insurance Company contended that the Tribunal, having appreciated the oral and documentary evidence, awarded the reasonable amount, which does not warrant interference.

10. The petitioner, who is the claimant, is not disputing the finding with regard to rash and negligence and also the driving licence of the driver of the offending auto bearing No. AP 22 T 8932.

11. P.W.1 – Ravinder is the claimant and appellant, whereas P.W.2 is the Doctor Y.Srinivasulu who treated P.W.1 in the Government Hospital, Kurnool. The clinching evidence of P.W.1 is that while he was travelling in auto bearing No. AP 22 T 8932, at the time of the accident, there were himself and five other passengers were travelling in the auto and he denied the suggestion that there were 20 passengers in the auto and he stated that he is not aware whether in the documents filed by him it was mentioned that there were 15 passengers apart from P.W.1. The Tribunal, having considered the evidence of P.W.1 and considering the certified copy of the F.I.R. under Ex.A1, came to the conclusion that on 29.11.1999, while P.W.1 was travelling along with others in the auto, the driver drove the auto bearing No. AP 22 T 8932 with high speed in rash and negligent manner and lost the control and as a result, the auto turned turtle and it is also mentioned that the petitioner, who is 20 years old, was sustained injuries.

12. Though the Insurance Company took the plea that as the auto was overloaded, the driver lost the control and caused the accident, it did not choose to examine any independent witness. One, Venkataswamy, the Administrative Officer of the 2nd respondent, is examined as R.W.1, whose evidence is that the seating capacity of the auto is '7', whereas the owner of the auto allowed 15 to 20 persons to travel in the vehicle. There

is no such plea in the counter. What is the plea of the 2nd respondent in the counter is that the vehicle was not roadworthy to ply and the driver does not have any valid and effective driving licence at the time of the accident. In the absence of any such plea that the accident was due to overload, any amount of evidence adduced is inadmissible in evidence. The Tribunal, having considered the oral evidence of P.W.1 and the documentary evidence under Ex.A1, came to the conclusion that Ex.A1 - F.I.R. in crime No.76 of 1999 was submitted within 15 minutes after the accident, which ruled out any possibility of prior deliberations to introduce the rash and negligent act of the accused in causing the accident. In Ex.A3 – charge-sheet, the Investigating officer stated that there is rash and negligence on the part of the driver of the auto.

13. With regard to injuries, there is evidence of P.W.1 corroborated with P.W.2 Doctor. According to P.W.1 and Ex.A2 – wound certificate, P.W.1 sustained dislocation of the middle, second and third fingers of left hand, but by oversight against column ‘nature of injuries’, it was mentioned as ‘simple’ instead of ‘grievous’ in Ex.A2. It is also clearly mentioned by the tribunal in the judgment that while recording the evidence of P.W.1, the Court has observed on demonstration by P.W.1 that his left palm, where the crush injury is visible, being healed and also the disorder of the last two fingers of the palm as indication of dislocation. During cross-examination P.W.1 denied the suggestion that injuries are not sustained in the accident.

14. Now, coming to the evidence of P.W.2, who is working as C.A.S. in Government General Hospital, Kurnool, he stated that on 12.9.2007 he examined P.W.1 and found crush injury of left dorsal with fracture of left index and middle fingers, K-wiring operation was done on the date of operation and he observed that 15% to 20% disability.

15. It is the evidence of R.W.1 that the driver of the auto was having only non-transport vehicle driving licence and he was not holding transport vehicle licence. Ex.B2 is the extract of driving licence dated 5.5.2004 and Ex.B3 is the attested xerox copy of R.C. and Ex.B4 is permit certificate. R.W.1, during cross-examination, admitted that Ex.B1 policy was in force as on the date of accident. The driver of the auto bearing No.AP 22 T 8932 is the owner-cum-driver of the said auto and the crime papers under Ex.A3 goes to suggest that at the time of accident he was carrying 15 passengers. Since the driver does not possess valid driving licence, the Tribunal find that by virtue of Ex.B1 Policy, the insurance company has to pay and recover the same. With regard to the claim of the petitioner, the petitioner claimed Rs.20,000/- lump sum under the head 'Special Damages'. Though the evidence is not produced, the Tribunal found just and necessary to award Rs.10,000/- towards transportation to hospital and medical expenses, as the petitioner was immediately shifted to Government Hospital, Atmakur from the place of accident and granted Rs.5,000/- towards pain and suffering. Besides that, the Court also granted a quantum of Rs.2,000/- for simple injury and Rs.5,000/- towards grievous injury and Rs.10,000/- towards fracture. The petitioner has sustained one fracture injury. As such, the Tribunal has awarded

Rs.10,000/- as *ad hoc* compensation for fracture injury. Though P.W.1 stated that he is earning Rs.2,000/- per month and it was not rebutted, the Tribunal considered it as Rs.1,500/- per month by following the minimum wages act and observing that the petitioner must have taken treatment at least two months for recovery of fracture injuries, as such, awarded Rs.3,000/- towards loss of earnings and also deducted 1/4th towards his contributory negligence, which comes to Rs.21,000/-. Accordingly, awarded compensation of Rs.21,000/-. The reasoning and conclusions of the Tribunal are not supported by any oral or documentary evidence. The findings are erroneous and amounts awarded are very meagre which warrants interference.

16. Though under Ex.A4 – bunch of medical bills the petitioner spent Rs.427/-. There is no reference or whisper about Ex.A4 expenditure. Therefore, the findings and conclusions of the Tribunal are illegal and not supported by any oral or documentary evidence.

17. The consistent evidence of P.W.1 is that immediately after the accident he was shifted to Government Hospital, Atmakur and from there, he was referred to Government General Hospital, Kurnool and after discharge, he took treatment in a private hospital and incurred Rs.20,000/- towards treatment, transport and extra nourishment. He is suffering lot of pain and mental agony and loss of income and he is not able to work. He sustained fracture of left hand and other injuries all over the body. P.W.2 – Doctor is the proper person to speak about the injuries. The Doctor is examined as P.W.2 on commission. The evidence of P.W.2 is supported

by Ex.A2 – wound certificate. Ex.A2 – wound certificate goes to suggest that on 22.11.199 at 10.30 AM P.W.1 was admitted in the Government General Hospital with inpatient No.33059 for treatment due to injuries sustained in the accident.

18. It is also the evidence of P.W.2 that at present patient developed contracture present in left index and middle finger and not able to flex index and middle fingers and he is not able to lift heavy objects and nature of injury is grievance. In Ex.A2, as already discussed by the Tribunal, it was inadvertently noted as ‘simple’. The evidence of the Doctor - P.W.2 corroborated with Ex.A2 – wound certificate shows that injuries are grievous in nature and there is fracture to the left index and middle finger and K-wiring operation was done at the time of admission in the hospital. The petitioner developed contracture in left index and middle finger and not able to flex index and middle fingers and he is not able to lift heavy objects. The disability is assessed at 15% to 20% by P.W.2, who is the proper person to speak. It is also the evidence of P.W.2 that P.W.1 requires another operation which costs Rs.15,000/- to Rs.20,000/- in future. Though P.W.2 was cross-examined at length, respondents could not elicit any favourable material. P.W.2 volunteers that the column No.1 of Ex.A2 shows the fracture and dislocation, which is grievous in nature. It is volunteered by P.W.2 that either the orthopaedic surgeon or plastic surgeon can issue the disability certificate. He denied the suggestion that the disability is partial in nature.

19. In the facts and circumstances discussed above, the evidence of P.W.1 corroborated with P.W.2 and supported by Ex.A3 – charge-sheet and Ex.A2 – wound certificate established that P.W.1 sustained crush injury of left dorsal with fracture of left index and middle fingers and K-wiring operation was done on 29.11.1999. As on the date of evidence of P.W.2 i.e., on 26.9.2007 the patient P.W.1 developed contracture in left index and middle fingers and he is not able to flex index and middle fingers and he is not able to lift heavy objects. The disability is assessed at 15% to 20%.

20. The petitioner has suffered fracture on left hand and dislocation of last two fingers of the palm indicating permanent disorder, therefore I award an amount of Rs.20,000/- towards compensation for the fracture of middle and index fingers and an amount of Rs.5,000/- for simple injury, besides that I also award Rs.7,000/- towards medicines and treatment and Rs.10,000/- towards transport, which is awarded by the Tribunal. I also award Rs.4,000/- towards extra-nourishment and Rs.10,000/- for future operation and also Rs.4,000/- towards pain and sufferance.

21. In the facts and circumstances discussed above and having considered the nature of injuries and nature of treatment and sufferance, the appellant, in all, is entitled to compensation of Rs.60,000/-. Since the driver does not possess valid driving licence at the time of accident, by virtue of Ex.B1 Policy, the insurance company has to pay and recover the same.

22. In the result, the appeal is allowed with proportionate costs while setting aside and modifying the award and decree dated 18.10.2007 in O.P.No.476 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge at Gadwal and passed the modified award for Rs.60,000/- payable by the respondent No.2 at first with proportionate costs and interest at 7.5 % per annum from the date of petition i.e., 19.9.2002 till the date of deposit or realization, which shall be deposited, after adjusting the amount, if any, already deposited or paid, within a period of 30 days from the date of receipt of a copy of the appeal judgment. On such deposit, the appellant is permitted to withdraw the same. Later, respondent No.2 is entitled to recover the same from respondent No.1 by filing execution petition.

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

24. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

23rd April, 2018

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