

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.1436 of 2010

JUDGMENT :

The appellant/claimant aggrieved by the Award dated 6.1.2010 in O.P. No.54 of 2008 on the file of the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad, partly allowing the petition by awarding an amount of Rs.1,63,000/- against respondents 1 and 2 jointly and severally with interest at 7.5% per annum from the date of the petition till the date of realisation, preferred this appeal.

2. The claim of the appellant in brief is that the petitioner filed application under Section 166 of the Motor Vehicles Act claiming compensation of Rs.3,50,000/- for the injuries sustained by him.

According to the evidence of P.W.1 and averments of the claim petition on 22.11.2007 at about 11 AM while the petitioner was proceeding on kinetic Honda scooter, near road No.1 and 3 junction, Banjara Hills, Hyderabad, the driver of the Tata Safari Car bearing No.AP 9BB 5847 drove it in rash and negligent manner and dashed the kinetic Honda scooter, as a result, the appellant fell down and sustained fracture to left leg, crush injury to left leg, injuries to head, multiple injuries to hands and injuries to all over the body.

Immediately, he was shifted to Care Hospital, where he was admitted as inpatient, underwent operation for left leg and flap coverage was fixed and external fixators were fixed, nail were inserted, debriment was done and PoP was applied.

After discharge, the petitioner/appellant is undergoing periodical check ups in the Care Hospital. At the time of the accident, he was 35 years old and he used to earn Rs.20,000/- per month by doing tiffin centre business and contribute the same for welfare of his family. But, on account of injuries, he was confined to bed and unable to do any work and depending upon attendants for any work. The respondents 1 and 2 being owner and insurer both are liable to pay the compensation.

3. The 2nd respondent *inter alia* contended that the claimant has to prove age, income and insurance besides medical expenses and that the accident was occurred due to rash and negligence of the petitioner. There was no negligence on the part of the driver of the Tata Safari car.

4. The Tribunal, after hearing and having considered pleadings of both sides, settled the following issues for trial :

1. Whether the petitioner sustained injuries in the accident on 22.11.2007 due to rash and negligent driving of the driver of Tata Safari Car bearing No.AP 9BB 5847?
2. Whether the petitioner is entitled to any compensation? If so, from whom?
3. To what relief?

5. On behalf of the petitioner, P.Ws.1 to 5 were examined and Exs.A1 to A10 were got marked. No oral or documentary evidence was adduced by respondents 1 and 2.

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

“Whether the Award of the Tribunal suffers from any legal infirmity warranting interference in the appeal.”

The contention of the appellant is that the Tribunal failed to consider that the appellant/claimant suffered disability to an extent of 30% which is partial and permanent as per Ex.A7 – disability certificate and also failed to consider the earnings as deposited by P.W.5 and ought to have awarded the amount as claimed. Further, the Tribunal failed to award any amount towards attendant charges, pain and sufferance, loss of amenities, transport to hospital, damage to clothing and damage to the vehicle.

The further contention is that the interest at 7.5% per annum is very low inasmuch as the national banks are allowing interest at 11% to 12% per annum to the customers on fixed deposits.

On the other hand, the 2nd respondent – Insurance Company contended that the Medical Officer – P.W.2 opined that the injuries sustained by P.W.1 i.e., fracture of both bones of left leg is grievous in nature and the Tribunal taking into consideration the nature and gravity of the injury, awarded Rs.75,000/- to the grievous

injury, which is excessive and the award passed by the Tribunal is legal, valid and do not suffer from any legal infirmities warranting interference.

7. The claimant himself is examined as P.W.1 besides examining Doctors who treated him as P.Ws.2 and 4 and the Billing Manager of the Care Hospital as P.W.3. To prove the income, he examined owner of the hotel as P.W.5. Ex.A1 is the certified copy of F.I.R. If the evidence of P.W.1 is read with Ex.A1, there is a clear assertion in Ex.A1 – F.I.R. which is corroborated by the evidence of P.W.1 that on 22.11.2007 at 11 AM while P.W.1 was proceeding on a kinetic Honda scooter near Road Nos.1 and 3 Junction, Banjara Hills, Hyderabad, Tata Safari Car bearing No.AP 9BB 5847 came in high speed and rash and negligent manner and dashed the kinetic Honda scooter and as a result, P.W.1 sustained injuries. Though P.W.1 was cross-examined at length, no favourable material was elicited.

8. Under Ex.A1, as already discussed above, there is specific assertion that the accident occurred due to rash and negligent driving of the driver of the Tata Safari Car bearing No.AP 9BB 5847.

9. The facts and circumstances discussed above clearly established the rash and negligence on the part of the driver of the Tata Safari Car bearing No.AP 9BB 5847. The Tribunal having considered the ocular evidence of P.W.1 since supported by Ex.A1 – F.I.R. came to the right conclusion that the accident was occurred due

to rash and negligence of the driver of the Tata Safari Car Bearing No.AP 9BB 5847, particularly when there is no rebuttal evidence, either oral or documentary, produced by the 2nd respondent, having taken the plea that the accident was due to rash and negligent driving of the claimant himself and there is no negligence on the part of the driver of the Tata Safari Car. In the absence of any such rebuttal evidence, the finding of the Tribunal that the accident was due to rash and negligent driving of the driver of the Tata Safari Car is legal, valid and do not suffer from any legal infirmities warranting interference.

10. With regard to the injuries on the person, there is evidence of P.W.1 wherein he clearly deposed that he sustained fracture of left leg, crush injury to left leg, injuries to head, multiple injuries to hands and injuries to all over the body. The injuries are further corroborated by the evidence of P.Ws.2 and 4, supported by the documentary evidence under Ex.A2 – discharge summary, Ex.A3 – Admission note issued by the Care Hospital and Ex.A7 – disability certificate, supported by Ex.A8 – x.rays and Ex.A9 photos. P.W.2 specifically mentioned in Ex.A7 that the disability is at 30%. Besides the evidence of P.W.1 and documentary evidence under Exs.A2, A3, A7 to A9, there is evidence of P.W.2 where he deposed that P.W.1 sustained fracture of both bones of left leg and he underwent operation and opined that injury is grievous in nature. Besides the oral evidence of P.Ws.2 and 4, P.W.1 produced Ex.A4 – final bill for Rs.59,138/-, Ex.A5 – medical bills worth Rs.9,660/- which were confronted to

P.W.3 – Billing Manager of the Care Hospital. The Tribunal having considered the ocular evidence of P.Ws.2 to 4, corroborated by the evidence of P.W.1, the bills under Exs.A4 and A5, which were medicines purchased as per prescriptions under Ex.A6, which were confronted to P.W.3, find that the petitioner is entitled for the amounts incurred under Exs.A4 and A5, accordingly allowed Rs.68,000/- towards medical expenses.

11. The Tribunal having taken into consideration Ex.A7 – disability certificate wherein Doctor prescribed that disability is 30%, allowed only Rs.75,000/- treating the injury as grievous in nature, but not considered the disability as spoken by P.Ws.2 and 4, supported by Exs.A7 and A2 – discharge summary. It is the consistent evidence of P.Ws.1 and 5 that at the time of accident P.W.1 was 35 years old and used to do tiffin centre business and earn Rs.20,000/- per month. P.W.5 deposed that P.W.1 used to earn Rs.20,000/- per month on tiffin business and there is loss of earnings. He did not produce any documentary proof to support the evidence of P.Ws.1 and 5 that he was doing a tiffin centre business and earning Rs.20,000/- per month. In the absence of any such convincing evidence, I consider the income of P.W.1 at Rs.4,000/- per month. With regard to the age, the evidence of P.W.1 is that he was 35 years old as on the date of the accident. In Ex.A1 – F.I.R., Ex.A2 – discharge summary, Ex.A3 – admission note issued by Care Hospital, the age of P.W.1 was recorded as 35 years. Therefore, I consider the age of P.W.1 as 35

years as on the date of the accident. The same view was taken by the Tribunal while awarding compensation of Rs.75,000/-. Having considered the age of the injured as 35 years and monthly income of P.W.1 as Rs.4,000/-, the relevant multiplier is '16' as per *Sarla Verma v. DTC*¹.

12. Having estimated the monthly income of the deceased at Rs.4,000/-, the annual income comes to Rs.48,000/- and by applying multiplier '16', the compensation comes to Rs.7,68,000/-. The disability of P.W.1 is 30% and 30% of which comes to **Rs.2,30,400/-**.

13. As observed by the Tribunal with regard to medical expenses, there is evidence of P.Ws.1, 2 and 4 that the appellant sustained fracture of both bones of left leg and he underwent operation and incurred medical expenditure under Exs.A4 and A5, which was confronted to P.W.2 and P.W.3, which under Ex.A4 comes to Rs.59,138/- and under Ex.A5 comes to Rs.9,660/-; accordingly, the appellant is entitled to **Rs.68,000/-** towards medical expenses and treatment.

14. The Tribunal also having considered the evidence of P.Ws.1 and 2 and the disability at 30% as per Ex.A7 – disability certificate issued by P.W.2 and considering the evidence of P.W.5, estimated the loss of earnings at **Rs.20,000/-**, which is tenable. No amount was awarded by the Tribunal separately towards pain and sufferance, transportation to hospital, damage to clothing, besides the

¹ (2009) 6 SCC 121

loss of amenities and damage to the vehicle, for which there is no evidence. Certainly, the petitioner is entitled for compensation towards pain and sufferance, transportation and damage to the clothing. In the claim petition, he claimed Rs.5,000/- towards transportation, Rs.1,000/- towards damage to clothing, Rs.30,000/- towards pain and sufferance, but no proof, either oral or documentary, was filed. Having considered the nature of the injuries sustained by the P.W.1 and also treatment and operation undergone to the left leg and fixing of flap coverage and external fixators, inserting of nail, doing of debriment and applying of PoP, it is just and proper to award **Rs.3,000/-** towards transportation, **Rs.20,000/-** towards extra-nourishment and **Rs.2,000/-** towards attendant charges, **Rs.1,000/-** towards damage to clothing and **Rs.5,000/-** towards pain and sufferance. In all, the petitioner is entitled for a compensation of **Rs.3,49,400/-**. Accordingly, the award of the Tribunal suffers from legal infirmities for not awarding any amount towards pain and sufferance, transportation, extra-nourishment, attendant charges and damage to clothing, for which the appellant is entitled.

15. In the result, the appeal is allowed in part with proportionate costs while setting aside and modifying the award and decree dated 6.1.2010 in O.P.No.54 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad and passed the modified award for Rs.3,49,400/- against the respondents 1 and 2 jointly and severally with

proportionate costs and interest at 7.5 % per annum from the date of petition i.e., 20.12.2007 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.

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

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

.6.2018

skmr



JUSTICE N.BALAYOGI