

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 287 OF 2006

JUDGMENT:

This appeal is directed by the claimant against the judgment dated 13.09.2005 passed by the Motor Accidents Claims Tribunal-cum-I-Additional District Judge, Nalgonda (for short 'the Tribunal), in O.P.No.831 of 2002, whereby the tribunal dismissed on the ground that there is no satisfactory evidence to prove that the accident occurred due to rash and negligent driving of the driver of the Tractor-Trailor bearing No.AAG 1654 and 9268 and that the injured received injuries in such motor accident.

2. For the sake of convenience, the parties herein are referred to as arrayed in the tribunal.

3. The case of the petitioner is that he was aged 9 years and student by profession and securing good marks in his class and that on 23.01.2002 at about 10.00 a.m. when he was standing at his house at Girijanagar H/o Konda Bheemanapalli Village, a tractor-trailer bearing No.AAG 1654 and AAG 9268 of the 1st respondent came in a rash and negligent manner with high speed and dashed to him, due to which, his left leg below the knee was cut off and grievous injures on all over the body and that immediately he was shifted to Yashoda Hospital, Hyderabad and took treatment for one month and that the petitioner was hale and healthy prior to the accident.

4. Respondents 1 and 2 remained set exparte before the tribunal. Respondent No.3 – Insurance Company filed counter denying claim petition.

5. In order to prove the case of the claimant, PWs.1 to 3 were examined and marked Exs.A1 to A.7 on their behalf and except Ex.B.1 copy of policy, no oral or other documentary evidence is adduced on behalf of the respondents in support of their contentions. Basing on the pleadings, oral and documentary evidence, the tribunal framed the following issues:

- 1) Whether the accident occurred due to rash and negligent driving by the driver of the Tractor-Trailer bearing No.AAG 1654 and AAG 9268?
- 2) Whether the petitioner is entitled for compensation from the respondents 1 to 3 i.e. the owners of the Tractor-Trailer and insurance company?
- 3) To what relief?

6. The claimant claimed compensation of Rs.2,00,000/- towards injuries caused and being left leg amputated. But the tribunal has disbelieved the version of the claimant due to inconsistency statements and the documents. But for the wrong entries made by the hospital authorities, the genuine case cannot be denied and the claimant cannot be put to hardship and deprive of his legitimate right. In the light of the complaint, FIR and charge sheet filed by the police, who is an independent agency and including the evidence of PW.2, the doctor, who performed surgery and amputated the leg of the claimant, it is a clear case of road traffic accident. Though the accident occurred on 23.01.2002 at

about 10.00 a.m, the complaint has been registered with the police and FIR has been issued after 24 hours i.e. on 24.01.2002. Immediately after the accident occurred, the injured was shifted to the District Health Centre, Devarakonda and thereafter, shifted to Yeshoda Hospital, Hyderabad, where he was admitted and surgery has been performed and on the very next day, his father went to the police station and gave the complaint. Hence, the delay can be considered. Basing on the evidence of Exs.A.1 and A.2 and evidence of PW.2-doctor, this Court feels that, it is a fit case to consider the delay and grant just compensation.

7. Learned counsel appearing for the 3rd respondent/insurance company vehemently opposed and contended that since the age of the injured is '9' years and there is no evidence to show that the claimant is student and his education jeopardized because of the accident and relied on judgment of the Apex Court in **Lata Wadhwa & others vs State Of Bihar & others**¹ that it is the responsibility of the claimant to prove the claims under different heads in support of the oral evidence. Further learned counsel also contended that the order passed by the tribunal is just and proper in dismissing the claim petition as there was no satisfactory evidence to prove that the accident occurred due to rash and negligent driving of the driver of the crime vehicle. On the other hand, as per Ex.A.5 - discharge summary of the Yashoda Hospital, which does not disclose the history of road traffic accident, but it is mentioned as a case of crush injury (L) foot H/o fall of a brick wall

¹ AIR 2001 SC 3218

over foot at Devarjibda No.H/o LOC and thus, the claimant is not entitled for any compensation. It is also contended that the claimant is not entitled for any future prospects since the loss of earnings and future prospects do not affect the students.

8. As seen from Ex.A.1 – FIR and Ex.A.3 – charge sheet, the investigation categorically reveals that it is a case of accident and basing on independent agency investigation i.e the police, this Court is of the view that it is a case of accident and not falling brick wall. Including the evidence of PW.3, the doctor, who supports the case that it is an accident case and the injuries caused due to rash and negligence driving and he treated the claimant. Admittedly, before the tribunal, the insurance company did not lead any evidence in rebutting the claim and contentions of the claimants. Even in the cross examination no efforts were put to shatter the testimony of the claimant and the supporting witnesses to show that the claimant is not a student and there is no discussion by the tribunal in this regard. In **V.Mekala v M.Malathi and another**² and also in **Hemraj v Oriental Insurance Company Limited**³ the Court held that in respect of the student and also in respect of claims where notional income is fixed by the Court, future prospects can be awarded. It is not open for the insurance company to improve its case at the stage of appeal when they have not adduced any oral evidence or not filed any documentary evidence before the tribunal and also not made out their case by way of cross examining the claimants witnesses

² 2014 ACJ 1441

³ 2018 ACJ 5

i.e. PWs.1 to 3. In view of the same, there is no reason to disbelieve the claim of the claimant and accordingly, the claimant is entitled for the compensation.

9. Since the age of the claimant is '9' years, the relevant multiplier applicable is '15' as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**⁴. From the evidence of PW.4, doctor and as per Ex.A.7, the disability is 60%. As per the decision of the apex Court in **Kishan Gopal and another v Lala and others**⁵, notional income of the injured can be taken as Rs.30,000/- per annum. As per the decision of the apex Court in **National Insurance Company Ltd v Pranay Sethi**⁶, 40% future prospects can be awarded.

10. Therefore, the claimant is entitled for 60% disability, which comes to Rs.2,70,000/- and 40% future prospects, which comes to Rs.1,80,000/-.

11. Thus, the claimant is entitled for the total compensation of Rs.4,50,000/-. The compensation amount shall carry interest 7.5% per annum from the date of petition till the date of realization. Though the claim is made for Rs.2,00,000/- in order to grant just and proper compensation for the reasons indicated above and in the light of the decision of the Apex Court in **Nagappa v Gurudayal Singh**⁷ the compensation awarded can be more than the claim, the present appeal needs to be allowed. As per Ex.A.1

⁴ 2009 ACJ 1298

⁵ 2013 ACJ 2594

⁶ 2017(7) 170 (SC)

⁷ 2003(2) SCC 274

and A.3 and Ex.B.1 policy which is in force, the respondent/insurance company is directed to deposit the compensation amount within three months from the date of this judgment. The injured claimant is entitled to withdraw the compensation amount soon after the deposit is made.

12. The injured claimant has to pay deficit court fee on over and above the claim amount and if the deficit court fee not paid as per Rule 475 of the M.V. Rules before the Tribunal, the injured cannot be permitted to execute for the enhanced amount.

13. In view of the above, the appeal is allowed. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

Date: 17.09.2019
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T.AMARNATH GOUD,J

