APHC010020352008

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Bench Sr.No:-34 [3396]

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 4075 of 2008

Avula Venkataramana ...Appellant

Vs.

Kandula Narayana Reddy and Others ...Respondent(s)

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CORAM : DR JUSTICE VENKATA JYOTHIRMAI PRATAPA

DATE : 25th November 2026

Present:

Advocate for Appellant: K RATHANGA PANI REDDY

Advocate(s) for Respondent(s): CHILUKURI NARENDRA BABU,

The Court made the following Judgment:

The appellant herein is the claimant, who sustained injuries in a motor vehicle accident, and has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, "the M.V. Act"), seeking enhancement of the compensation of Rs.21,000/- awarded by the learned V Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Kurnool at Nandyal (for short, "the Tribunal"), vide Award dated 23.03.2007 in M.V.O.P.No.344 of 2004, as against his claim for a sum of Rs.1,00,000/-.

2. The case of the claimant, as pleaded in the claim petition, is that he was aged about 42 years and was working as a cleaner on the lorry bearing No.AP-7-X-2034, belonging to the 1st respondent, earning a sum of Rs.2,000/- per month. It is further pleaded that on 11.08.2004, at about 9.00 a.m., while the claimant was travelling as a cleaner in the aforesaid lorry, which was carrying a load of firewood, the vehicle reached the Bio Power Station near Polur Village. While the claimant was standing on the load of firewood and attempting to detach the rope tied around the load, the driver of the lorry, without giving any indication or warning, suddenly moved the vehicle in a rash and negligent manner. As a result, the claimant lost his balance, fell down from the lorry and sustained grievous injuries, including a fracture of the shaft of the right femur.

It is the further case of the claimant that immediately after the accident, he was shifted to a private nursing home, where he was given initial

treatment. Thereafter, on 13.08.2004, he was admitted to the Government District Hospital, Nandyal, where he underwent treatment as an inpatient until 10.09.2004. During the course of treatment, surgery was performed on 23.08.2004 and interlocking screws were fixed in the right femur. Despite the treatment, he continued to suffer from pain and difficulty in movement and was unable to attend to his regular duties as a lorry cleaner. He also sustained permanent disability on account of the injuries suffered in the accident.

The claimant further pleaded that, on account of the injuries and disability, he suffered loss of earnings and incurred considerable amounts towards medical treatment and other incidental expenses. Therefore, claiming that the accident occurred solely due to the rash and negligent driving of the driver of the offending lorry, he filed the claim petition seeking compensation of Rs.1,00,000/- from the respondents.

3. The 1st respondent, being the owner of the offending lorry, remained ex parte.

The 2nd respondent-insurance company filed its counter denying the material allegations made in the claim petition. It specifically denied the manner of the accident, the alleged rash and negligent driving of the driver of the offending lorry and the claimant's assertion that the accident occurred in the manner pleaded by him. The claimant was put to strict proof of the accident, the involvement of the offending vehicle and the alleged negligence of its driver.

The 2nd respondent also disputed the age, occupation and monthly income of the claimant. It denied that the claimant was working as a cleaner on the offending lorry and earning Rs.2,000/- per month. It further denied the nature and extent of the injuries, the treatment allegedly undergone by the claimant, the period of his hospitalization, the medical expenditure incurred by him and the alleged permanent disability. The claimant was therefore called upon to establish his entitlement to the compensation claimed under the various heads.

The 2nd respondent also questioned its liability to indemnify the 1st respondent and raised objections regarding compliance with the terms and conditions of the insurance policy, including the validity of the driving license of the driver and the necessary permit and fitness certificate of the offending vehicle. It consequently sought dismissal of the claim petition.

4. On the basis of the pleadings, the Tribunal framed the following issues for consideration:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP-7-X-2034, resulting in injuries to the claimant?
2. Whether the claimant is entitled to compensation? If so, to what amount and from whom?
3. To what relief?

5. During the enquiry, the claimant examined himself as P.W.1 and examined the doctor as P.W.2. On behalf of the claimant, Exs.A1 to A6 were

marked. On behalf of the second respondent-insurance company, its employee was examined as RW1 and Ex.B1-insurance policy was marked.

6. Upon appreciation of the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and that the claimant sustained a fracture of the shaft of the right femur in the said accident.

The Tribunal also considered the question whether the accident arose out of the use of the motor vehicle. In that context, it distinguished the decision reported in AIR 1993 Orissa 89, *Karhel Rana v. Gangadhar Swain*, wherein the injury was caused by a log falling during the process of loading. The Tribunal observed that, in the present case, the claimant sustained injuries when the driver moved the lorry negligently while the claimant was detaching the rope tied around the load. Relying upon the decisions reported in 1996 ACJ 988, *Babu v. Remesan*, and 2003 ACJ 1413, *New India Assurance Co. Ltd. v. Rajamani*, the Tribunal held that the accident arose out of the use of the motor vehicle.

With regard to the age of the claimant, the Tribunal accepted his age as 42 years at the time of the accident. However, though the claimant claimed that he was earning Rs.2,000/- per month, the Tribunal, relying upon his statement in the cross-examination that he was receiving a salary of Rs.600/- per month apart from bata, assessed his monthly income at Rs.600/-.

With regard to permanent disability, the Tribunal considered Ex.A6-disability certificate and the evidence of PW2, who assessed the disability at 15%. However, on the ground that the fracture had united and there was no shortening of the leg, the Tribunal restricted the permanent disability to 5% and awarded Rs.5,500/- towards permanent disability and loss of future earnings.

The Tribunal further awarded a sum of Rs.10,000/- towards pain and suffering and Rs.5,500/- towards medical and other expenses, thereby granting a total compensation of Rs.21,000/-.

With regard to liability, the Tribunal held that the 1st respondent-owner was vicariously liable for the negligent act of the driver and that the second respondent-insurance company was liable to indemnify the first respondent, as the insurance policy covered the risk of employees and premium had been collected for eight employees, including the claimant.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the claimant preferred the present appeal contending that the Tribunal awarded meager compensation of Rs.21,000/- without properly appreciating the oral and documentary evidence.

It is contended that the Tribunal erred in restricting the disability to 5%, contrary to Ex.A6-disability certificate and the evidence of PW2, who assessed the permanent disability at 15%. It is further contended that the

Tribunal failed to consider the functional difficulties experienced by the claimant, particularly his inability to squat and sit cross-legged and the difficulty in performing his regular duties as a lorry cleaner.

It is also contended that the Tribunal erred in taking the monthly income of the claimant at Rs.600/- instead of Rs.2,000/-, despite his evidence regarding his employment as a cleaner on the offending lorry. The Tribunal further failed to award any amount towards loss of earnings during the period of treatment, though the claimant sustained a fracture of the right femur, underwent surgery and remained as an inpatient for nearly one month.

The claimant also contends that the amounts awarded towards pain and suffering and medical expenses are inadequate and that the Tribunal failed to award just compensation under the other permissible heads. Hence, the claimant seeks enhancement of the compensation awarded by the Tribunal.

8. Heard Sri K. Rathanga Pani Reddy, learned counsel for the appellant and Sri CH. Narendra Babu, learned counsel for the respondents.

9. Having heard the submissions made on either side and upon perusal of the material available on record, the following point arises for consideration in this appeal:

"Whether the compensation awarded by the learned Tribunal is just and reasonable or requires enhancement?"

10. There is no dispute with regard to the occurrence of the accident on 11.08.2004, due to the rash and negligent driving of the driver of the offending lorry bearing No.AP-7-X-2034. It is also not in dispute that the claimant sustained a grievous injury, namely, fracture of the shaft of the right femur. The finding of the learned Tribunal with regard to the negligence of the driver of the offending vehicle has not been challenged. Therefore, the only question that requires consideration is with regard to the quantum of compensation payable to the claimant.

11. Coming to the quantum of compensation, it is the case of the claimant that he sustained a fracture of the shaft of the right femur and underwent surgery, during which interlocking nailing was performed. Ex.A2-wound certificate and Ex.A4-hospital record establish the nature of the injury and the treatment undergone by him. The claimant was admitted as an inpatient in the Government District Hospital, Nandyal, from 13.08.2004 to 10.09.2004.

The claimant, while being examined as PW1, deposed that he has been suffering from permanent disability on account of the injuries sustained in the accident. Ex.A6-disability certificate issued by the District Medical Board, Government General Hospital, Nandyal, discloses that the claimant underwent interlocking nailing of the right femur and is experiencing difficulty in squatting and sitting cross-legged, besides limping. The percentage of permanent disability was assessed at 15%.

PW2 is the Orthopaedic Surgeon who treated the claimant and also participated as a member of the Medical Board which issued Ex.A6-disability certificate. PW2 categorically deposed that the claimant sustained a fracture of the shaft of the right femur and that he experiences difficulty in squatting and sitting cross-legged, besides having a limp while walking. He further confirmed that the claimant suffered 15% permanent disability.

The learned Tribunal, however, assessed the disability at 5%, mainly on the ground that the fracture had united and there was no shortening of the leg.

12. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court reported in ***Raj Kumar v. Ajay Kumar***,[1] wherein the Hon'ble Supreme Court explained the distinction between medical disability and functional disability and held that the effect of permanent disability on the earning capacity of an injured claimant has to be assessed having regard to his avocation, nature of work and the functional difficulties resulting from the disability.

In the present case, the claimant was working as a cleaner on a lorry. Having regard to the nature of his avocation, the ability to squat, sit cross-legged and perform physical activities is essential for discharging his duties. The evidence of PW2 establishes that the claimant is experiencing difficulty in performing such activities and is also walking with a limp.

[1] (2011) 1 SCC 343

Therefore, merely because the fracture has united and there is no shortening of the leg, the functional difficulties experienced by the claimant cannot be ignored. Considering the nature of the injury, the medical evidence and the avocation of the claimant, this Court is of the considered view that the disability assessed at 15% by the Medical Board deserves to be accepted.

Accordingly, the permanent disability of the claimant is taken at 15%, instead of 5% assessed by the learned Tribunal.

13. Coming to the income of the claimant, it is his case that he was earning Rs.2,000/- per month by working as a cleaner on the offending lorry. Though no documentary evidence was produced to establish his income, PW1 deposed that he was earning Rs.2,000/- per month. In his cross-examination, he volunteered that he was receiving a salary of Rs.600/- per month from the owner of the lorry, apart from bata for every trip/load.

Having regard to the nature of his employment, the evidence of P.W.1 and the date of the accident, i.e., 11.08.2004, this Court finds no reason to disbelieve his testimony that he was earning Rs.2,000/- per month. Accordingly, the monthly income of the claimant is taken at Rs.2,000/-.

The claimant was aged about 42 years at the time of the accident. In view of the principles laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi*****,** [2] and ***Jagdish v. Mohan***,[3] the claimant

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[2] **(2017) 16 SCC 680**
[3] **2018) 4 SCC 571**

is entitled to an addition of 25% towards future prospects, having regard to his age and nature of employment. Thus, the monthly income of the claimant, including future prospects, comes to Rs.2,500/- (Rs.2,000/- + 25%).

14. With regard to the multiplier, in ***Sarla Verma v. Delhi Transport Corporation***, [4] the Hon'ble Supreme Court laid down the appropriate multiplier to be adopted having regard to the age. Since the claimant was aged 42 years at the time of the accident, the applicable multiplier is 14. Accordingly, the compensation payable towards loss of future earnings on account of permanent disability is calculated as follows:

Monthly income including future prospects: Rs.2,500/-

Functional disability: 15%

Multiplier: 14

Rs.2,500/- × 15% × 12 × 14 = Rs.63,000/-.

Accordingly, the claimant is entitled to a sum of Rs.63,000/- towards loss of future earnings on account of permanent disability, as against Rs.5,500/- awarded by the learned Tribunal.

15. The learned Tribunal awarded a sum of Rs.10,000/- towards pain and suffering. Having regard to the fact that the claimant sustained a grievous injury, namely, fracture of the shaft of the right femur, underwent surgery and remained as an inpatient for nearly one month, this Court is of the view that a sum of Rs.25,000/- would be just and reasonable compensation under the

[4] **(2009) 6 SCC 121**

said head. Accordingly, the amount is enhanced from Rs.10,000/- to Rs.25,000/-.

16. The learned Tribunal awarded a sum of Rs.5,500/- towards medical and other expenses, taking into consideration Ex.A5-medical bills and the treatment undergone by the claimant. This Court is not inclined to interfere with the said finding, and the amount of Rs.5,500/- is accordingly maintained towards medical expenses.

17. No separate amount was awarded under the heads of special diet, transportation, attendant charges and other incidental expenses. Having regard to the gravity of the injuries, the evidence of PWs.1 and 2 and the medical record placed before the Tribunal, it can reasonably be inferred that the claimant would not have been in a position to travel by public transport for a considerable period during his recovery. Further, adequate nutrition and assistance would have been necessary during the period of treatment and convalescence.

In view of the same, this Court is inclined to award a sum of Rs.10,000/- towards special diet, transportation, attendant charges and other incidental expenses.

18. No amount was awarded by the learned Tribunal towards loss of amenities of life and loss of expectation of life.

In ***Jagdish v. Mohan*** (supra), the Hon'ble Supreme Court recognised the need to compensate an injured claimant for the inability to lead a normal life and enjoy the amenities which he would have enjoyed but for the disability caused by the accident.

Having regard to the nature and gravity of the injuries sustained by the claimant, the permanent disability suffered by him and the functional difficulties experienced in his day-to-day activities, this Court is of the view that a sum of Rs.20,000/- under each of the above heads would be just and reasonable compensation.

Accordingly, a sum of Rs.20,000/- is awarded towards loss of amenities of life and another sum of Rs.20,000/- towards loss of expectation of life.

19. No amount was awarded towards loss of earnings during the period of treatment. Having regard to the fact that the claimant sustained a fracture of the shaft of the right femur, underwent surgery and remained as an inpatient for nearly one month, it can reasonably be presumed that he would not have been in a position to attend to his regular avocation as a lorry cleaner for at least six months.

Taking the monthly income of the claimant at Rs.2,000/-, a sum of Rs.12,000/- (Rs.2,000/- × 6 months) is awarded towards loss of earnings during the period of treatment and convalescence.

20. In view of the foregoing discussion, the claimant is entitled to the following amounts of compensation:

Sl. No.	Head of compensation	Amount awarded by the Tribunal	Amount awarded by this Court
1	Pain and suffering	Rs.10,000/-	Rs. 25,000/-
2	Permanent disability and loss of future earnings	Rs.5,500/-	Rs. 63,000/-
3	Medical expenses	Rs.5,500/-	Rs. 5,500/-
4	Special diet, transportation, attendant charges and other incidental expenses	Nil	Rs. 10,000/-
5	Loss of amenities of life	Nil	Rs. 20,000/-
6	Loss of expectation of life	Nil	Rs. 20,000/-
7	Loss of earnings during the period of treatment	Nil	Rs. 12,000/-
	TOTAL	**Rs.21,000/-**	**Rs.1,55,500/-**

21. Thus, the claimant is entitled to a total compensation of Rs.1,55,500/- as against Rs.21,000/- awarded by the learned Tribunal. Consequently, the compensation is enhanced by Rs.1,34,500/-.

Though the original claim was restricted to Rs.1,00,000/-, the Hon'ble Supreme Court in ***Nagappa v. Gurudayal Singh***, [5] held that there is no restriction on the Tribunal or the Court to award compensation only up to the amount claimed, provided the compensation awarded is just, reasonable and supported by the evidence on record. Therefore, the claimant is entitled to the aforesaid just compensation.

[5] **(2003) 2 SCC 274**

22**.** Insofar as the liability is concerned, the learned Tribunal has already recorded a finding that the 1st respondent, being the owner of the offending lorry, is vicariously liable for the negligent act of the driver and that the 2nd respondent-insurance company is liable to indemnify the liability of the 1st respondent, as the policy covered the risk of employees. The said finding has not been challenged in the present appeal. Hence, the liability fastened by the learned Tribunal remains undisturbed.

23. Accordingly, the M.A.C.M.A Appeal is allowed, enhancing the compensation from Rs.21,000/- to Rs.1,55,500/-, with interest at the rate of 7.5% p.a, on the enhanced compensation from the date of the claim petition till the date of realization. The respondents are directed to deposit the enhanced compensation, after giving credit to the amount already deposited, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any, shall stand closed.

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DR. VENKATA JYOTHIRMAI PRATAPA,J

25.11.2026
RJS/SZT

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THE HONOURABLE DR JUSTICE VENKATA JYOTHIRMAI PRATAPA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 4075/2008

Dt: 25.11.2026

RJS/SZT