APHC010377892016

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3604]
(Special Original Jurisdiction)

TUESDAY, THE 6th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 2093/2016

Between:

1. S R NAIDU, E.GODAVARI DIST, S/O. LATE SURYA BHASKARA RAO, HINDU, AGED ABOUT 32 YEARS, OCC: NIL, R/O. VEMULAVADA VILLAGE, KARAPA MANDAL, EAST GODAVARI DISTRICT.

...APPELLANT

AND

1. B PUTHRAYYA E GODAVARI DIST 1 OTHER, S/O. SURYANARAYANA MURTHY, HINDU, AGED ABOUT 32 YEARS, OCC: DRIVER 8; OWNER OF HERO HONDA SPLENDOR MOTOR CYCLE BEARING NO. AP 5 AG 3367, R/O. GOLLAPALEM, KAJULURU MANDAL, KAKINADA, EAST GODAVARI DISTRICT.
2. M/S NEW INDIA ASSURANCE COMPANY LIMITED, REPRESENTED BY ITS DIVISIONAL MANAGER, KAKINADA, EAST GODAVARI DISTRICT. (RESPONDENT NO. 1 IS NOT NECESSARY PARTY TO THIS APPEAL SINCE HE REMIND EXPARTE BEFORE THE TRIBUNAL BELOW)

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Courtto allow the M.A.C.M.A. by setting aside the decree and order made in M.V.O.P. No. 304 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-IV Addl. District Judge, East Godavari District at Kakinada in so far as dismissal of the claim petition for the sum of Rs. 14,96,981/- and enhance the compensation and pass

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Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 46 days in presenting the appeal and pass

Counsel for the Appellant:

1. A K KISHORE REDDY

Counsel for the Respondent(S):

1. .

2. C PRAKASH REDDY

The Court made the following:

THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 2093 OF 2016

JUDGMENT:

Assailing the judgment and decree dated 05.08.2015 passed in M.V.O.P.No.304 of 2008 by the Motor Accident Claims Tribunal-cum-IV Additional District Judge, East Godavari, Kakinada, petitioner preferred the instant appeal seeking enhancement of compensation granted by the tribunal.

2. The parties are being referred to as 'petitioner' and 'respondents' as arrayed in the petition before the tribunal, for the sake of convenience and clarity.

3. Case of the petitioner is thus:

On 05.07.2007, while the petitioner and his friend were going from Kakinada, on their motor cycle bearing No.AP 32 C 3292, at about 10.00 P.M, when they reached outskirts of Nadakuduru Village, respondent No.1, being the rider of the motor cycle bearing No.AP 5 AG 3367 rode the same in a rash and negligent manner and dashed against their two wheeler and as a result of which, petitioner and his friend sustained multiple injuries. Immediately after the accident, they were shifted to Life Line Hospital, Kakinada. Petitioner lost his middle finger and ring finger of his right hand, underwent three major operations to his right thigh, knee and below the knee. A case in crime No.57 of 2007 is registered of the offence under Section 337 of Indian Penal Code (hereinafter referred to as 'the Code') against the rider of the two wheeler. The petitioner is selected as civil police constable and is undergoing training at Amberpeta Police Training College, Hyderabad. The accident occurred due to the rash and negligent driving of rider of two wheeler bearing No.AP 5 AG 3367 and as such, respondents are liable to pay compensation.

4. Respondent No.2 filed counter affidavit refuting the averments made in the petition, wherein, *inter alia* contended that the petitioner claimed excessive compensation, there was no negligence on the part of the rider of two wheeler, petitioner was at fault, petition is bad for non-joinder of the necessary parties, respondents are not liable to pay compensation, and with other formal denials, prayed to dismiss the petition.

5. Taking into consideration of the aforementioned pleadings, the learned tribunal settled the following issues:

> 1) Whether the accident occurred due to the rash and negligent driving of Hero Honda Splender motor cyle bearing No.AP 5 AG 3367, resulting the injuries to the petitioner?
>
> 2) Whether the petitioner is entitled to claim compensation, if so, to what amount and from which of the respondents?
>
> 3) To what relief?

6. During trial, petitioner himself examined as PW.1 and he has got examined PWs. 2 to 5 and filed Exs.A1 to A9 and X1 to X3 documents. As against the said evidence, respondent No.2 has got examined RW.1, and filed Exs.B1 to B3 documents. At the culmination of trial, learned Tribunal allowed the petition in part granting compensation of Rs.10,03,019/- with interest at 7.5% per annum. Feeling aggrieved by the said judgment and decree dated 05.08.2015, petitioner preferred the instant appeal urging the following grounds:

i) The judgment and decree of the learned Tribunal is illegal, arbitrary, unjust and contrary to law.

ii) The learned Tribunal erred in fixing the income of the deceased as Rs.12,000/- though PW.4 had categorically stated that he is drawing salary of Rs.25,000/-p.m.

iii) Despite disability certificate issued by the authorities stating that the appellant sustained disability at 40%, the learned Tribunal failed to award compensation under the head of permanent

iv) The learned Tribunal erred in deducting 1/3rd salary of the petitioner towards personal expenses.

v) The learned Tribunal failed consider the aspect that due to the injuries, the petitioner lost his job, and with other grounds, prayed to allow the appeal.

7. Heard both sides.

8. On hearing both sides and upon perusing the material available on record, that points that would arise for consideration are:

1. Whether the petitioner sustained injuries in the accident dated 05.07.2007 occurred due to rash and negligent driving of motor cycle bearing No.AP 5 AG 3367?
2. Whether the petitioner is entitled for compensation? If so, to what amount?
3. Whether the judgment and decree dated 05.08.2015 passed by the learned Tribunal are sustainable in facts and law?
4. To what relief?

9. Admittedly, respondents have not preferred appeal against the findings of the learned Tribunal, however, being the first appellate Court and the final fact-finding Court, this Court has to re-examine and re-appreciate the entire oral and documentary evidence on record.

10. Point No.1:

(a) To prove the contentions, petitioner himself examined as PW.1, filed his examination-in-chief affidavit in lieu of his chief examination, reiterating the averments made in the petition. It came in his evidence that on 05.07.2007, while himself and his friend were going from Kakinada, on their motor cycle bearing No.AP 32 C 3292, at about 10.00 P.M, when they reached outskirts of Nadakuduru Village, respondent No.1, being rider of the motor cycle bearing No.AP 5 AG 3367 rode the same in a rash and negligent manner and dashed

against their motor cycle and as a result, himself and his friend sustained multiple injuries and immediately after the accident, they were shifted to Life Line Hospital, Kakinada, and nothing useful material is elicited in his cross examination. Added to it, having received notice, respondent No.1 remained exparte. So, respondent No.1 who is the best person to speak about the accident is not examined and his non examination is fatal to the case of the respondents.

(b) Further, as seen from Ex.A1/First information report, a case in crime No.57 of 2007 is registered of the offence under Section 338 of the Code, against the rider of motor cycle bearing No. AP 5 AG 3367 and after completion of investigation, police found fault with the respondent No.1 and laid Ex.A9/Charge sheet alleging that the accident occurred due to his rash and negligent riding. So, Exs.A1 and A2 support the evidence of PW.1 and no rebuttal evidence is adduced by the respondents on this aspect. So, in the absence of any rebuttal evidence, the evidence of PW.1, which is buttressed by Exs.A1 & A2, clinchingly proves that the accident occurred due to the rash and negligent riding of motor cycle bearing No.AP 5 AG 3367 by its rider i.e. respondent No.1. Added to it, as seen from Ex.A3/wound certificate, petitioner sustained injuries in the road traffic accident. As per the material brought on to the record, this court came to conclusion that the accident occurred due to the rash and negligent riding of motor cycle bearing No.AP 5 AG 3367, by its rider and the petitioner sustained injuries in the said accident. Hence, this point is accordingly answered in favour of the petitioner.

11. Point No.2:

(a) As per the version of the petitioner, he was hale and healthy, was aged about 27 years, and on 05.07.2007, he sustained multiple grievous injuries to his hand and right leg, immediately after the accident shifted to Life Line Hospital, Kakinada, underwent surgeries, took treatment as in patient, spent Rs.1,50,000/- towards treatment, despite treatment and sustained disability.

To substantiate his injuries, treatment, disability and income, he has got examined doctors, Superintendent of SP Office and one of the constable who underwent training along with him as PWs.2 to 5 and filed Exs.A2 to A9 and X1 to X3. PW.2/ Managing Director of Lifeline Hospital, Kakinada testified that she examined the petitioner on 05.07.2007 at 1.30 P.M and found the following injuries:

1) Crush injury on right hand.

2) Compound communited fracture right femur lower 1/3rd.

3) Compound communited fracture right tibia upper 1/3rd.

4) Lacerated injury over right medical malleolus.

(b) Further, injuries Nos.1 to 3 are grievous and injury No.4 is simple in nature, they gave treatment for crush injuries to the right middle and ring fingers, during treatment, conducted surgeries, exploration, alignment of bone fragments and plating of the femur are done by Dr. Y. Nageswara Rao, Orthopedic Surgeon, they discharged the petitioner on 20.07.2007 and the petitioner continued treatment as an outpatient till 30.08.2007. She further stated that at the time of discharge, the petitioner was advised three months' complete bed rest and subsequently attended the hospital twice for review, and she admitted Ex.A6/Medical bills issued by their hospital.

(c) P.W.3/Professor of Orthopedics in Government General Hospital, Kakinada testified that he examined the petitioner and found the injuries referred to by PW.2, in his opinion injury Nos.1 to 3 are grievous in nature and on 07.07.2007, he conducted surgeries for the femur and tibia and the petitioner was discharged on 20.07.2007. Further, Ex.A5/Disability certificate was issued by the Medical Board, Government General Hospital, Kakinada, assessing the petitioner's permanent disability at 40%, and that the petitioner was unfit for strenuous work, there was non-union of the femur fracture due to the severity of the injury and that the petitioner had difficulty in squatting, though he could perform other day-to-day activities, removal of the implants

would not correct the disability and denied the suggestion that removal of the implants would improve the petitioner's ability to squat or that the non-union was due to negligence on the part of the petitioner.

(d). So far as age and income of the petitioner is concerned, he was hale and healthy, was aged about 27 years, was selected as police constable and was undergoing training, as on the date of accident, despite treatment, he sustained disability, lost his job, his colleagues who underwent training along with him were posted as police constables and drawing salary of Rs.25,000/- p.m. and due to the accident and injuries, he lost his income (past and future). Ex.A5/disability certificate discloses that the age of the petitioner is 27 years. There is no contra evidence to that affect. So, it can safely be held that the petitioner was aged about 27 years, as on the date of his accident. Coming to the employment and earnings, PW4/Section Superintendent in the office of the Superintendent of Police, Kakinada, testified that the petitioner was selected for the post of Stipendiary Police Constable and his name is shown at Sl.No.39 in Ex.A3, Ex.X2 is the medical examination report wherein the petitioner was certified as unfit for rigorous training, candidates undergoing training were paid only with stipend and that, due to the accident and consequent medical unfitness, the petitioner could not complete the training. He further stated that the petitioner was kept in abeyance pending final medical certificate and that there was no provision in their department to provide him an alternative post on the basis of Ex.A3 and since the petitioner could not complete the training and was declared medically unfit, he was not provided any alternative employment.

(e) P.W.5/K. Ramakrishna, Police Constable, testified that himself and the petitioner were selected for police training at Hyderabad and that the petitioner's name is shown at Sl.No.39 in Ex.A3, during the training, the petitioner went to Kakinada and thereafter, could not attend the remaining training due to the accident and further, he was subsequently removed from training as he was found medically unfit. It is his further evidence that during

training period, he received Rs.3,000/- per month as stipend and that there was no fixed salary by then, after completion of training, he was appointed as police constable and was drawing gross salary of Rs.25,000/- per month vide Ex.X3.

(f) So, as per the evidence of PWs 1 to 5 coupled with Exs.A2 to A13 and X1 to X3 documents, petitioner sustained grievous injuries to right hand and right leg, underwent two surgeries, took treatment for more than 55 days, admitted in hospital on several occasions from 05.07.2007 to 30.08.2007, incurred Rs.1,24,419/- towards treatment, 10,000/- towards transportation, lost income during the period of treatment and also suffered functional disability at 40%.

(g) With regard to the functional disability, in view of the decision of Hon'ble Apex court in ***Raj Kumar Vs. Ajay Kumar and another***[1], this court has to consider the following three aspects to ascertain the effect of permanent disability on the actual earning capacity:

> Firstly, what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life).
>
> Secondly, his avocation, profession and nature of work before the accident, as also his age.
>
> Thirdly, whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

Further, in the same case of ***Raj Kumar*** (Supra) Hon'ble Apex Court held as follows:

> "19. We may now summarize the principles discussed above:
>
> (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

[1] (2011) 1 SCC 343

> (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).
>
> (iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.
>
> (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

h) In the present case at hand, the petitioner who was selected as police constable on adhoc basis, sustained injuries while he was undergoing training and in view of the fitness certificate, he was terminated from service and as such, the functional disability may be fixed at 50%. The details of compensation under each head are as follows:

(1) Pecuniary Damages:

i) **Loss of earnings due to disability and future prospects:**

Having considered the nature of job, age, education and other allied aspects, this court assessed the functional disability of the petitioner at 40%.

In ***Sarla Verma v. Delhi Transport Corporation***[2], Hon'ble Apex Court held thus:

> "It is necessary to reiterate that the multiplier method is logically sound and legally well established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years virtually adopting a multiplier of 45 and even if — — one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible."

[2] (2009) 6 SCC 121

This principle applies to the permanent disability cases also. So, the loss of future earnings have to be calculated by applying the multiplier method. It is evident from the record that the petitioner was aged about 27 years, as on the date of accident and the relevant multiplier is '17'.

Further, in ***National Insurance Company Limited Vs. Pranay Sethi & others***[3], three Judge bench of Hon'ble Apex Court has considered the claim for future prospects of a victim, a carpenter, who has suffered permanent disability.

(ii).**Loss of earnings (past):** As per the evidence of PW.s 1, 2 and 4, the petitioner was away from work for six months. In the given facts and circumstances coupled with the evidence of PW.1, 3 and 4, the learned tribunal assessed monthly income of the petitioner at Rs.12,000/- and the same can be considered. This is the case of injuries, however, the learned Tribunal erroneously deducted 1/3rd of the total income towards personal expenses. So, he is entitled to an amount of Rs.72,000/- (Rs.12,000/- x 6)

(iii)**Medical Expenses:**

As per the evidence of PWs.1 and 2 coupled with Exs.A5 to A7, petitioner incurred an amount of Rs.1,24,419/-, towards treatment. So, the same is to be considered.

(iv)**Attendant Charges:** In view of the judgment of Hon'ble Apex Court in ***R.D.Hattangadi Vs M/s. Pest Control (India) Private Limited and Others***[4], the Court need not be mathematical in calculating expenses towards home attendant, but ought to look upon the circumstances prevailing in the society to decide the amount and in the present case at hand, the petitioner took treatment and underwent surgeries, was advised bed rest and also follow up treatment, and as such, he is entitled to attendant charges for two months, which are assessed at Rs.10,000/-.

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[3] *(2017) 16 SCC 680*
[4] 1995 1 SCC 551

(v) Loss of Conveyance:

In ***Sidram Vs. The Divisional Manager, United India Insurance Company Limited and another***[5] (Supra), the Hon'ble Apex Court held at para No.89 as follows:

> "89. Hence, we may grant the appellant loss of conveyance and special diet up to Rs.50,000/- considering that after the accident at Kulgod-Gokak Road, the appellant was shifted to Lake view Hospital Belgaum wherein he was admitted as an indoor patient from 18.07.2012 to 06.08.2012 for 19 days, and took treatment for the injuries suffered by him, and continued to take the treatment after getting discharged from the Hospital as well."

Having considered the injuries and treatment he has taken, an amount of Rs.20,000/- is awarded towards conveyance.

(2) Non-Pecuniary Damages:

(i) Pain and Suffering:

The Divisional Controller, KSRTC v. Mahadeva Shetty and Another[6]**,** the Hon'ble Apex Court held thus:

> *"A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities of life the features like his age, marital status and unusual deprivation he has undertaken in his life has to be reckoned".*

In view of the injuries and permanent disability sustained by the petitioner and the period of treatment taken by him, an amount of Rs.2,00,000/- is awarded towards pain and suffering.

(ii) Loss of Amenities:

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[5] (2022) 8 SCR 403
[6] 2003 (7) SCC 197

In ***Pappu Deo Yadav Vs. Naresh Kumar and others***[7], the Hon'ble Apex Court held thus:

> "The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions (Govind Yadav Vs. New India Insurance Co Limited, (2011) 10 SCC 683."

Having regard to the injuries and treatment, an amount of Rs.20,000/- is awarded towards loss of amenities.

Further, in ***Govind Yadav Vs. New India Insurance Co Limited***[8], Hon'ble Apex Court held thus:

> "18. In our view, the principles laid down in Aravind Kumar Mishra Vs. New India Assurance Company Limited (2010) 10 SCC 264 and Raj Kumar Vs. Ajay Kumar must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily . If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accused".

(g) So, in all, the petitioner is entitled to the compensation as follows:

S.No.	HEADS		CALCULATION
I	**Pecuniary damages:**		
i)	Loss of earnings due to disability (12,000 X 12 X 17 X50/100)	Rs.	12,24,000/-
ii)	Future Prospects (12,24,000X 40/100)	Rs.	4,89,600/-
iii)	Loss of earnings (past) for 6 months (12,000x6)	Rs.	72,000/-
iv)	Medical expenses	Rs.	1,24,419/-
v)	Attendant charges	Rs.	10,000/-
vi)	conveyance	Rs.	20,000/-
vii)	Extra nourishment	Rs.	10,000/-

[7] AIR 2020 SCC 4421
[8] (2011) 10 SCC 683

	Total		19,50,019/-
II	**Non Pecuniary expenses:**		
vii)	Pain and suffering	Rs.	2,00,000/-
viii)	Loss of amenities	Rs.	20,000/-
	Total		2,20,000/-
	TOTAL (pecuniary+non-pecuniary damages) (19,50,019+2,20,000)	Rs.	21,70,019/- (rounded to 21,70,000/-)

i) In this court's well considered view that the compensation of Rs. 21,70,000/- is just, fair and reasonable.

j) So far as the liability of the respondents is concerned, it is to be noted that a finding is already recorded in issue No.1, holding that respondent No.1/rider of motorcycle bearing No.AP 5 AG 3367 was solely responsible for the accident, and respondent No.2/insurance company are vicariously liable to indemnify the liability of respondent No.1. It is not in dispute that the policy of the offending vehicle was in force as on the date of accident. Hence, this issue is answered, holding that the respondent Nos.1 and 2 are jointly and severally liable to pay compensation.

12. Point No.3:

Upon reappraisal of the evidence on record, and for the foregoing reasons, this court came to the conclusion that the learned Tribunal erred in assessing the quantum of compensation and as such, the same is liable to be modified. Hence, this point is answered accordingly.

13. Point No.4:

1) **In the result**, this Motor Accident Civil Miscellaneous Appeal is allowed, and the compensation awarded by the tribunal is enhanced from **Rs.10,03,019/- to Rs.21,70,000/- (Rupees Twenty one lakhs seventy**

thousand only) together with interest at the same rate as awarded by the tribunal, from the date of the claim petition till the date of realization.

2) Time for deposit, as aforesaid, with interest, excluding the amount, if any, already deposited, is two (2) months from the date of receipt of a copy of this judgment.

3) On such deposit, the petitioner is permitted to withdraw the compensation as awarded supra along with accrued interest thereon, excluding the amount, already paid.

4) There shall be no order as to costs.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

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SUNITHA GANDHAM, J

06.10.2026

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