

(2012) 08 AP CK 0086

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 4403 of 2003

Kanche Chandraiah @ Kusala Satyanaran Reddy

APPELLANT

Vs

Jaissingani Chandan and others

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Citation : (2013) 2 ACC 263 : (2013) 1 ALT 341

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : A. Rajasekhara Reddy, for the Appellant; M. Bhaskar Lakshmi for 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—Dissatisfied with the quantum of compensation granted in O.P. No. 251 of 2000 on the file of Motor Accidents Claims Tribunal-District Judge, at Karimnagar, the claimant has filed this Civil Miscellaneous Appeal. Facts, in brief, are:-

The appellant is the claimant in O.P. No. 251 of 2000 on the file of Motor Accidents Claims Tribunal-District Judge, Karimnagar ("the Tribunal", in short). He was Underground Trammer in 6-B Incline of Singareni Collieries Company Limited, Godavarikhani and was earning Rs. 5,364/- per month. On 25.01.2009 at about 9 P.M., he was proceeding on a scooter as a pillion rider along with his friend Srinivas from Food Corporation of India Cross Road to his native place Veeralapalli and on reaching the outskirts of Kazipalli village, an auto bearing No. AP15-V-80 came in the opposite direction driven in a rash and negligent manner and dashed the scooter. As a result, he fell down and sustained fracture injuries to right leg apart from other injuries. He took treatment in Nizam Institute of Medical Sciences, Hyderabad under various spells. His right patella came to be removed and he underwent operation to his fracture injuries. Due to the fracture injuries, his right leg is shortened by two inches. He was medically found to be unfit to discharge duties as underground Trammer. He came to be disengaged by

the employer and thereby; he lost his total earnings. He filed O.P. No. 251 of 2000 claiming compensation of Rs. 7,92,500/- against the driver, owner and insurer of the offended vehicle.

2. Before the Tribunal, the driver and the owner remained ex parte. The insurer filed counter resisting the claim of the claimant. The insurer denied the rash and negligent driving of the driver of the auto. The insurer also pleaded that the quantum of amount claimed by the claimant is excessive and exorbitant. The Tribunal framed the following issues for trial:-

1. Whether the accident took place due to the rash and negligent driving of the Auto Rickshaw bearing No. AP-15-V-80 by its driver?

2. Whether the petitioner is entitled to the compensation and if so to what amount and from whom?

3. To what relief?

On behalf of the claimant, he got himself examined as PW-1 besides examining three more witnesses as PWs.2 to 4 and got marked 15 documents as Exs.A-1 to A- 13 and Exs.C-1 and C-2. The insurer examined one witness as RW-1 and marked copy of the insurance policy as Ex.B-1. The Tribunal, on considering the evidence brought on record and on hearing the counsel appearing for the parties, came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the auto and thereby, proceeded to award compensation of Rs. 5,00,000/-, by order dated 25.8.2003.

3. Dissatisfied with the quantum of compensation, the claimant has filed this Civil Miscellaneous Appeal.

4. Heard Sri A.Rajasekhar Reddy, learned counsel appearing for the appellant-claimant and learned counsel appearing for the 3rd respondent-insurer.

5. It is contended by the learned counsel appearing for the appellant- claimant that the appellant-claimant was aged 47 years as on the date of trial and therefore, proper multiplier for arriving at the future loss of earnings, as per the decision in Sarla Verma v. Delhi Transport Corporation¹ is thirteen. But the Tribunal adopted multiplier "9" and therefore, the future loss of earnings of the appellant-claimant are to be arrived at by applying "13" multiplier instead of multiplier "9". It is also contended by him that the Tribunal having noted the period of hospitalization of the petitioner on different spells has not granted fair compensation towards loss of past earnings. In a way, his contention is the Tribunal has awarded Rs. 24,000/- towards loss of past earnings without taking into consideration the period of hospitalization. It is also contended by the learned counsel that the quantum of amount allowed to the appellant-claimant towards pain and suffering is not commensurate with the injuries sustained by the appellant-claimant in the accident. In nutshell, the contention of the learned counsel is that the quantum of amount as claimed by the appellant-claimant deserves to be allowed. Learned counsel placed reliance on the decision of

Supreme Court in R.D.Hattangadi v. Pest Control (India) Pvt. Ltd² in support of his contentions.

6. Learned counsel appearing for the 3rd respondent-insurer submits that the appellant-claimant was in hospital for about 133 days in different spells and therefore, the quantum of amount allowed by the Tribunal towards loss of past earnings is fair and proper compensation and the same is not required to be enhanced.

7. The only issue that arises for consideration in this appeal is: Whether the appellant-claimant made out any valid ground for enhancement of the compensation?

8. POINT : In the matter of determination of compensation, both the Tribunal and the Court are statutorily charged with a responsibility of fixing a "just compensation". It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of "just compensation" obviously suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. This reasonableness on the part of the tribunal and the court must be on a large peripheral field. Both the courts and the tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result becomes just and equitable. The Supreme Court in Sunil Kumar v. Ram Singh Gaud³ applied the multiplier method for calculation of compensation in case of injury for loss of future earnings. The same principle was recognized by the Supreme Court in Priya Vasant Kalgutkar v. Murad Shaikh⁴.

9. The appellant-claimant claimed the following amount under various heads:-

Special Damages

a)

Loss of earning from 25-1-99 to 30-4-2000

Rs. 90,000=00

b)

Transport to Hospital

Rs. 20,000=00

c)

Extra Nourishment & Medicines and two attendants

Rs. 2,57,000=00

d)

Damages to clothing and articles etc.

Rs.500=00

General Damages

a)

Compensation for pain and suffering

Rs. 25,000=00

b)

Compensation of loss of earning power

Rs. 4,00,000=00

Total

Rs. 7,92,500=00

10. The Tribunal awarded the following amounts under various heads:-

Pain and suffering

Rs. 20,000=00

Present value of the future loss

Rs.2,16,000=00

Past loss

Rs. 24,000=00

Medicines & Treatment

Rs.2,00,000=00

Transportation

Rs. 15,000=00

Attendant's expenses

Rs. 10,000=00

Extra Nourishment

Rs. 15,000=00

Total

Rs.5,00,000=00

11. As seen from the evidence of Pws.2 and 4 who treated the appellant-claimant, the appellant-claimant sustained fracture of both bones and femur of right leg, and right kneecap also came to be removed. The Medical Board assessed the physical disability at 40%. PW.3 is the Clerk in Singareni Collieries

Company Limited. He speaks of the earnings of the appellant-claimant. The evidence of Pw.3 shows that the appellant-claimant was engaged as daily wageworker and his earnings depend upon the work turned out by him on each day. The Tribunal on consideration of the various factors taken the monthly earnings of the appellant at Rs. 5,000/-. I do not see any error in the method adopted by the Tribunal in arriving at the monthly earnings of the appellant-claimant. The appellant-claimant took the treatment for about thirteen months on different spells and the same has been established by the Discharge Summaries issued by NIMS, which have been exhibited as Ex.A-9. The Tribunal granted Rs. 24,000/- towards loss of past earnings. In my considered view, the appellant-claimant is entitled to Rs. 65,000/- towards loss of past earning (Rs. 5,000/- X 13 = Rs. 65,000/-). Thus, the amount of Rs. 24,000/- awarded towards past earnings is enhanced to Rs. 65,000/-.

12. Learned counsel appearing for the appellant-claimant by placing reliance on R.D.Hattangadi's case (2nd supra) submit that an amount of Rs. 20,000/- awarded by the Tribunal towards pain and suffering is required to be enhanced to at least Rs. 1,50,000/-. In the cited decision, the injured was a practicing advocate and he became immobilized due to the injuries received by him in the accident. Such is not the situation in the case on hand. Therefore, the cited case is of no avail to the appellant-claimant.

13. The appellant-claimant was aged 47 years as on the date of his evidence. In case of injured, the proper multiplier has to be arrived at taking his age as on the date of his examination before the Tribunal as a witness. As per the Sarla Verma's case (1 supra), the proper multiplier to be adopted for the person aged 47 years is thirteen. Accordingly, the total loss of future earnings by applying the multiplier of "13", comes to Rs. 3,12,000/-. Therefore, the amount of Rs. 2,16,000/- awarded by the Tribunal towards loss of earnings is required to be enhanced to Rs. 3,12,000/-. The quantum of amount with regard to the compensation awarded by the Tribunal on other accounts does not warrant interference. Thus, in all, the appellant-claimant is entitled to compensation under various heads as shown hereunder:

Pain and suffering

Rs. 20,000=00

Loss of future earnings

Rs.3,12,000=00

Loss of past earnings

Rs. 65,000=00

Medical expenses

Rs.2,00,000=00

Transportation

Rs. 15,000=00

Attendant expenses

Rs. 10,000=00

Extra Nourishment

Rs. 15,000=00

Total

Rs.6,37,000=00

In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs. 5,00,000/- to Rs. 6,37,000/-. The enhanced compensation of Rs. 1,37,000/- shall carry interest at 6% per annum from the date of the petition till the date of payment. No costs.