
(2013) 11 AP CK 0112
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 2484 of 2011

Md. Khaleel

APPELLANT

Vs

J. Satyanarayana and M/s. National Insurance Company
Limited

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 1 ALD 503 : (2014) 2 ALT 504 : (2014) 1 AnWR 498

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : B.G. Uma Devi, for the Appellant; I. Maamu Vani for Respondent No. 2 and None Appeared, for the Respondent

Judgement

B. Siva Sankara Rao, J.—The injured-claimant filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-XIII Additional District Judge, Krishna district, at Vijayawada, (for short, "Tribunal") in M.V.O.P. No. 503 of 2009 dated 25.08.2011, awarding compensation of Rs. 17,000/- (Rupees seventeen thousand only) as against the claim of Rs. 1,00,000/- (Rupees one lakh only), for enhancement of compensation as prayed for in the claim petition u/s 166 of the Motor Vehicle Act, 1988 (for short, "the Act"). Heard Smt. B.G. Uma Devi, learned counsel for the appellant and Sri I. Maamu Vani, learned standing counsel for the 2nd respondent-M/s. National Insurance Company Limited. The 1st respondent-owner of the crime vehicle served with notice is called absent with no representation. Taken as heard the 1st respondent for his absence to decide on merits and perused the record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

2. The contentions in the grounds of appeal in nutshell are that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal erred in arriving a wrong conclusion on the quantum of compensation and awarded a very meager amount instead of awarding as

claimed and prayed for from nature of the injuries proved sustained, pain and sufferance there from, treatment undergone and amount incurred for the same and hence to allow the appeal by enhancing and awarding full compensation as prayed for.

3. Now the points that arise for consideration in the appeal are:

1. Whether the compensation awarded by the Tribunal is not just and requires interference by this Court while sitting in appeal against the award and if so with what enhancement to arrive a just compensation and with what rate of interest?

2. To what result?

POINT-1:

4. The facts of the case as proved before the Tribunal and not in dispute in this appeal are that, on 15.04.2009 at about 10.30 P.M. due to rash and negligent driving of the rider-cum-owner (1st respondent) of the crime vehicle (Motor cycle bearing No. AP 16 H 3547) belongs to the 1st respondent insured with the 2nd respondent covered by Ex. B.1 policy and Ex. A.3 in proof of driver of the motor cycle got driving Licence, same dashed against the bicycle of the claimant by name Sri Md. Khaleel, s/o Md. Sultan, aged 50 years, R/o D. No. 75-6-65, Swati centre, Bhavanipuram, Vijayawada, Dairy Assistant by avocation, while he was proceeding, as a result, the claimant sustained chip fracture of right scapula(as per Ex. A.2 medical certificate)) and also head injury (As per X.1 case sheet), which occurrence is covered by Ex. A.1 First Information Report in Cr. No. 329 of 2009 u/s 337 and 338 IPC. The Tribunal from the evidence of P.W.1-Claimant and P.W.2-Dr. U. Venkataramana with reference to Ex. A.2 and Ex. X.1), though medical bills for treatment are not filed by the claimant, but believing sustaining injuries by the claimant, pain and sufferance and mental agony, transport charges, came to conclusion of P.W.1 not got any permanent disability and awarded compensation in all Rs. 17,000/- including under all other heads, against respondent Nos. 1 and 2 jointly.

5. It is the contention of the learned counsel for the claimant in support of the grounds of the appeal that the Tribunal might have believed the permanent disability, and to award the compensation as claimed but the compensation awarded is unjust, unreasonable and the Tribunal is erred in awarding such a meager amount though it was supposed to award just compensation by applying correct multiplier by applying method of structured formula by taking consideration nature of injuries including the fracture and for treatment and medical expenses required, its pain and sufferance, loss of earnings with increase therefrom of future earnings and permanent disability.

6. Before coming to decide, what is just compensation in the factual matrix of the case, It is apt to state that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. In Ward v. James 1965

(1) All. E.R-563, it was observed by Lord Denning that award of damages in personal injury cases is basically a conventional figure derived from experience and from awards in comparable cases. Thus, in a case involving loss of limb or its permanent inability or impairment, it is difficult to say with precise certainty as to what composition would be adequate to sufferer. The reason is that the loss of a human limb or its permanent impairment cannot be measured or converted in terms of money. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case. Upjohn LJ in *Charle red House Credit v. Tolly* 1963 (2) All. E.R-432 remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in *LORD v. in 555 All.E.R (1) 1969 Cleaver, Parry Morris* observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment though it is impossible to equate the money with the human sufferings or personal deprivations. The Apex Court in *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, at paragraph No. 12 held that in its very nature whatever a Tribunal or a Court is to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standard. Thus, in most of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependent and estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required.

7. From the above legal position, coming to the factual matrix, the injured-claimant aged about 50 years as per Ex. A.2 medical certificate, sustained chip fracture to right scapula and the same is also corroborated by the evidence of P.W.2 doctor who issued Ex. X.1 case sheet of the treatment before him. The Tribunal having found the injury from the evidence on record, came to conclusion that there is no any loss of earning capacity or permanent disability to award any compensation thereunder awarded total compensation of Rs. 17,000/- for the said injury including medical expenses and treatment which is no doubt utterly low, unjust and unreasonable. In coming to assess what is reasonable and just compensation to award; Taking consideration of the head injury which is at vital

part and its impact do not immediately appear but there is possibility of complication in future, an amount of Rs. 25,000/- is the minimum compensation for the said fracture injury including for its pain and sufferance, an amount of Rs. 5,000/- for medical expenses, Rs. 1,000/- for transport charges, Rs. 2,000/- for attendant charges and Rs. 3,000/- for loss of earnings during period of treatment in all comes to Rs. 36,000/-. Coming to the rate of interest, though the interest at 9% p.a. awarded by the Tribunal even not in dispute, from the settled proposition of law in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and from the latest expression of the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, , interest is awarded at 7 1/2% per annum by modifying and reducing from 9% p.a. awarded by the Tribunal. Accordingly, Point-1 for consideration is answered.

POINT -2:

In the result, the appeal is allowed for the amount prayed for by modifying the Award of the Tribunal on quantum of compensation by enhancing the same from Rs. 17,000/- to Rs. 36,000/- (Rupees thirty six thousand only) with interest at 7 1/2% per annum from date of the claim petition till realization/deposit with notice. Respondent Nos. 1 and 2, who are jointly and severally liable to pay the compensation, are directed to deposit within one month said amount with interest from the date of petition, failing which the claimant can execute and recover. On such deposit or execution and recovery, the claimant is permitted to withdraw the same. There is no order as to costs in the appeal.