

THE HONOURABLE SRI JUSTICE
C.PRAVEEN KUMAR

MACMA Nos.471/2005 and 708/2005

COMMON JUDGMENT:

Both the appeals arise out of an accident that took place on 6-5-2002. Hence, with the consent of the parties, the above cases are disposed of by this common judgment.

2. Aggrieved by the quantum of compensation awarded in decree dt. 21-6-2004 passed in OP Nos.845/2002 and OP No.844/2002, the claimants preferred the present appeals respectively.

3. It is relevant to mention here that the claimant in OP No.844/2002 is the wife of the claimant in OP No.845/2002. They sustained injuries due to an accident that took place on 6-5-2002. The claimant in OP No.844/2002 claimed compensation to an extent of Rs.2,00,000/-, whereas the claimant in OP No.845/2002 claimed a sum of Rs. Rs.1,25,000/- as compensation.

4. The facts which led to filing of the appeals are as follows: The claimant in OP No.845/2002 was aged about 45 years and was earning Rs.3,000/- per month by doing labour work. The claimant in OP No.844/2002 was aged about 40 years earning Rs.2,100/- per month by doing labour work. On 6-5-2002 at about 10-30 AM, when they were travelling as pillion riders on vespa bearing registration No. AP 11 F 9819 were proceeding from Choutuppal side towards Hyderabad and when they reached Kothaguda cross roads, the driver of a Toyota qualis vehicle bearing registration No.AP 09 AJ 4077 owned by the first respondent in both the OPs drove the vehicle in high speed and in a rash and negligent manner, went on wrong side of the road and dashed against the vespa, due to which, both of them fell down sustaining various injuries. Immediately, they were taken to Kamineni Hospital, Hyderabad, and were admitted as inpatients. According to them, the claimant in OP No.845/2002 sustained a fracture of leg and unable to attend to his work. His leg movements were completely restricted. The

claimant in OP No.844/2002, sustained a fracture to the pubic rami and was unable to move or attend to any labour work.

5. The first respondent in both the OPs remained ex parte. The second respondent in the OPs filed separate counters denying the averments made in the claim petitions. They put the claimants to strict proof of their ages, avocations, incomes, and also with regard to various injuries sustained by them in respect of the above accident. According to them, there is no evidence to show that the rider of the scooter had a valid driving licence at the time of accident. It is further stated that the claimants were responsible for the said accident and not the driver of the toyota quails vehicle.

6. Basing on the above pleadings, the tribunal framed appropriate issues in both the OPs. It is unnecessary to reproduce all the issues, except the one in OP No.844/2002:

1. Whether the accident is due to rash and negligent driving of driver of the Toyota Qualis vehicle bearing No.AP 09 AJ 4077?
2. Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
3. To what relief?

7. In order to prove their claim, the claimants got examined P.Ws.1 to 3 and got marked Exs.A-1 to A-14. No oral evidence has been adduced on behalf of the insurance company but Ex.B-1 was got marked.

8. The tribunal after considering the evidence on record, awarded a sum of Rs.85,000/- as compensation to the claimant in OP No.844/2002 and Rs.70,000/- to the clamant in OP No.845/2002.

9. Heard the learned counsel for the appellants as well as the learned Standing Counsel for second respondent-insurance company in both the appeals.

10. The finding of the tribunal that the accident took place due to rash and negligent driving of the driver of the vehicle bearing No.AP 09 AJ 4077 has become final since the same has not been challenged either by the insurance company or by the owner of the vehicle.

11. The next question remains to be considered is what is the amount of compensation, which the appellants-claimants are entitled to?

12. It is not in dispute that the offending vehicle was insured with the second respondent in both the OPs.

13. The claimant in OP No.844/2002 got herself examined as P.W.1. According to P.W.1, immediately after the accident, she was taken to Kamineni hospital, where doctor issued Ex.A-3 wound certificate. Ex.A-3 indicates four injuries, viz., a) abrasion over right frontal orbit; b) abrasion over left hand; c) abrasion over right hand; and d) abrasion over left ankle. She was admitted as an inpatient in the Hospital and she had a head injury besides injuries on both lower limbs and that there was a pelvic compression distraction. In view of the said injuries, an operation was performed and a pelvic external fixator was applied. She was discharged from the hospital on 16-5-2002. She again got herself admitted on 6-6-2002, on which date fixator was removed. The discharge summaries indicate that she was discharged on 16-5-2002 and 7-6-2002 respectively. The discharge summaries indicate that fracture was united and there is no reference to disability. However, P.W.3, the Surgeon, who is said to have operated on P.W.1 stated for the first time in court that P.W.1 was having 20% disability and was limping due to pain. Since her leg movements are restricted she cannot undertake any labour work. It may be noticed that there is no disability certificate issued by the hospital where she took treatment or by the competent Medical Board. Therefore, the contention of the learned counsel for the appellants/claimants that the claimant in OP No.844/2002 sustained 20% disability and in view of the evidence of Doctor she sustained 100% loss of earning capacity is unsustainable.

14. For the purpose of claiming damages in case of injuries, the Supreme Court has laid down certain guidelines, which are as under: In case of injuries, the claimant is entitled to receive compensation under two heads, viz., pecuniary and non-pecuniary. Pecuniary damages (special damages) includes (i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and

miscellaneous expenditure. (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising; (a) loss of earning during the period of treatment; (b) Loss of future earnings on account of permanent disability. (iii) Future medical expenses. Non-pecuniary damages (general damages) includes (iv) Damages for pain, suffering and trauma as a consequence of the injuries. (v) Loss of amenities (and/or loss of prospects of marriage). (vi) Loss of expectation of life (shortening of normal longevity).

15. Under special damages, the claimant filed medical bills showing the expenditure incurred by her for purchase of medicines under Exs.A-6 to A-8, a series of medical bills amounting to Rs.44,768-60. The tribunal accepted the claim made by the claimant in OP No.844/2002 and awarded a sum of Rs.45,000/- towards medical expenses. The said finding of the tribunal needs no interference as it was based on material available on record.

16. P.W.2 who is the husband of P.W.1 deposed that he sustained injuries in the accident and he filed OP claiming compensation in respect of the injuries sustained by him. Both of them were inpatients in the Kamineni hospital for a period of 10 days. Definitely, they must have taken the help of an attendant to take care of them while they were undergoing operations/treatment. The tribunal awarded only Rs.1,000/- under the said count, which in my opinion is too less. In view of the same, the said amount is enhanced to Rs.2,500/-.

17. As stated supra, the accident took place near Kothaguda cross roads and immediately after the incident, they were shifted to Kamineni hospitals, Hyderabad. The evidence on record indicates that both the claimants were inpatients in the hospital for a period of 10 days. The tribunal awarded a sum of Rs.1,000/- towards transport charges. I feel, the said amount can be enhanced to Rs.3,000/- which is inclusive of transportation and extra nourishment.

18. P.W.1 in her evidence categorically stated that she was earning Rs.2,100/- per month as a labourer. It is true that it is difficult to

produce evidence showing their income, more so, in case where the parties pursue independent avocation like coolies, labourers etc., The tribunal awarded a sum of Rs.5,000/- taking the monthly income of the claimant at Rs.1,000/- per month, which will be around Rs.33/- per day. As seen above, the incident took place in the year 2002, definitely the daily wage of the female labourer during the said period would be around Rs.50/- to 60/- per day. Considering the nature of injuries sustained and the period for which the claimant could not attend to her avocation, loss of earnings during the period of treatment is enhanced from Rs.5,000/- to Rs.9,000/-.

19. Further, the evidence of Doctor clearly indicates that the claimant has sustained three simple injuries for which the tribunal awarded Rs.3,000/-. I feel the said sum can be enhanced from Rs.3,000/- to Rs.5,000/-.

20. Considering the fact that the claimant was an inpatient in the hospital for a period of 10 days where she underwent an operation by removing external fixator, the tribunal awarded a sum of Rs.30,000/- towards pain and suffering, loss of amenities of life, which I feel is reasonable and needs no interference.

21. The learned counsel for the appellant contends that 20% disability which the claimant in OP No.844/2002 has sustained will definitely lead to some loss in her learning capacity and requests some indulgence of this court. As noted above, the claimant was aged about 40 years and was earning around Rs. 50/- to Rs.60/- per day at the relevant point of time. Since there is no definite evidence on record with regard to the income and also the nature of work which she was doing at the time of accident except that she was a labourer, I feel, a reasonable amount can be awarded towards reduction in her earning capacity. Thus, a sum of Rs.10,000/- is awarded towards loss of future earnings. Thus, in all the claimant in OP No.844/2002 is entitled to a sum of Rs.94,500/- as compensation..

22. Immediately after the accident, P.W.2 (claimant in OP No.845/2002) was taken to Kamineni hospital where the Doctor noted the

injuries sustained by him in Ex.A-10. The injuries shown in Ex.A-10 are as follows:

1. Irregular laceration on parietal region 3 cm x 2.5 cm x 4 cm.
2. Small abrasion over left wrist 0.5 cm.
3. Small abrasion over right elbow 0.5 cm.
4. Small abrasion over left knee joint 0.5 cm
5. Small abrasion over right thigh 0.5 cm.

The claimant in OP No.845/2002 was admitted in the hospital on 6-5-2002 and was discharged on 10-5-2002. While discharging P.W.2, it was mentioned in the discharge summary-Ex.A-11 that "Course in the Hospital: Treated Conservatively." At the time of discharge they did not notice any neuro deficits and advised no acute intervention. However, discharge summary-Ex.A-11 indicates that there was a fracture of left fibula and there was suture wound over right pinna, large deep abrasion 2 x 1 cm over right temporal region and a lacerated wound. P.W.3, the Surgeon in Kamineni Hospital deposed that P.W.2 was operated on 6-5-2002 suturing of wound over right pinna and also on temporal region and fracture of fibula was treated conservatively. According to him, P.W.2 sustained 30% disability as he was having hip joint restriction. However, P.W.3 admitted that he did not issue any disability certificate and did not furnish any material as to how he came to the conclusion that the disability was 30%. P.W.2 has filed a series of medical bills Exs.A-12 and 13 amounting to Rs.10,328-75. The tribunal taking into consideration the bills produced by the claimant awarded an amount of Rs.10,500/- towards medical bills. The tribunal observed that the bills are computerized bills issued by the said hospital which has repute in Hyderabad. In my opinion, the amount awarded by the tribunal towards medical expenses is just and reasonable.

23. As deposed by P.W.3 the claimant was an inpatient in the hospital for four days and he alleged to have underwent an operation. The evidence of P.W.3 is silent as to the nature of operation which the claimant has undergone. In view of the fact that he was an inpatient in the hospital for four days and his wife was also there in the hospital, the

tribunal after considering the evidence on record, awarded a sum of Rs.2,500/- towards attendant charges, transportation, and extra nourishment. However, I feel that the amount awarded by the tribunal appears to be low. Admittedly, the claimant and his wife sustained injuries in the accident and immediately after the incident, they were taken to Kamineni hospital, Hyderabad where they took treatment for sometime. In that view of the matter, the amount of Rs.2,500/- awarded is enhanced to Rs.7,500/- towards transportation, extra-nourishment, attendant charges and other incidental charges.

24. The tribunal assessed the income of the claimant at Rs.1,000/- per month and awarded a sum of Rs.6,000/- towards loss of income during the period of treatment. This amount appears to be less. He being a labourer aged about 45 years at the time of accident would not be earning not less than Rs.100/- per day. Taking the said amount into consideration, amount of Rs.6,000/- awarded towards loss of earnings is enhanced to Rs.18,000/-.

25. The amount awarded for five simple injuries at Rs.6,000/- by the tribunal is just and reasonable which needs no interference.

26. Further, the tribunal awarded a sum of Rs.30,000/- towards pain and suffering for head injury, fractural of leg, which warrants no interference as the same has not been challenged by the insurance company. Similarly, a sum of Rs.15,000/- awarded by the tribunal due to concussion in brain also needs no interference. The said amounts awarded are based on proper appreciation of material available on record. The tribunal has shown sufficient indulgence and arrived at the said amounts by showing some sympathy. Thus, the claimant in OP No.845/2002 is entitled for a compensation of Rs.87,000/-.

27. In view of the findings given above, the compensation awarded to the claimant in OP No.844/2002 is enhanced from Rs.85,000/- to Rs.94,500/-/-. The enhanced compensation of Rs.9,500/- carry an interest @ 6 % per annum from the date of the petition till the date of payment. Further, the compensation awarded to the claimant in OP No.845/2002 is enhanced from Rs.70,000/- to Rs.87,000/-. The

enhanced compensation of Rs. 17,000/- will carry an interest @ 6 % per annum from the date of the petition till the date of payment.

28. With the above enhancement of compensation, the Civil Miscellaneous Appeals are allowed in part. No order as to costs.

C.PRAVEEN KUMAR, J

Dt. 28-9-2012

kmr