

THE CHAIRMAN, MOTOR ACCIDENTS CLAIMS TRIBUNAL-CUM-IV ADDITIONAL
DISTRICT JUDGE, VIZIANAGARAM

PRESENT: : Sri Shaik Sikinder Basha
Chairman, Motor Accidents Claims Tribunal-cum-
IV Additional District Judge, Vizianagaram.

Tuesday, the 05th day of March, 2024.

M.V.O.P.No. 181 of 2020

Between:

Chalumuri Suresh, S/o Butchiyya, Hindu, aged about
30 years, resident of Chinna Veedhi, Vasantha Village,
Vizianagaram District Petitioner

And:

1. E. Srinu, S/o Narayanappadu, Hindu, aged about 37 years,
resident of Lakkidam Village, Gantiyada Mandal, Vizianagaram
District Driver of Auto bearing No. AP 35 TB 1938

2. Kasireddy Srinivasa Rao, S/o Paradesi Naidu, Hindu, aged
about 45 years, resident of Door No.3-90, Raja Veedhi,
Lakkidam Veedhi, Gantiyada Mandal, Vizianagaram District
Owner of Auto bearing No. AP 35 TB 1938

3. The New India Assurance Co.Limited, represented by its
Divisional Manager, Srikakulam.
(The Policy No. 62120131180100002455, valid
from 30.06.2018 to 29.06.2019) .. Respondents.

This petition is coming on 28.02.2024 for final hearing before me in the
presence of Sri P.S.R.Murthy, Advocate for petitioner, 1st and 2nd Respondents
remained exparte and Sri N.Madhusudana Rao, Advocate for the 3rd Respon-
dent and upon hearing and having stood over till this day for consideration,
this court made the following:

ORDER

1. The petitioner-injured in a Road Accident filed this claim petition
under section 166 of the Motor Vehicles Act seeking compensation of
Rs. 6,50,000/- for the injuries sustained by him, with the following
averments:

2. That, on 14.04.2019 the petitioner along with his wife and four year old
child started on his Motorcycle bearing No. AP 35 AE 5222 to go to Visakhap-
atnam, when he reached near Vennupadu Village, Jami Mandal, one Auto
bearing No. AP 35 TB 1938 came in opposite direction from Bheemasingi
driven by 1st Respondent with high speed in rash and negligent manner, and

dashed the petitioner's Motorcycle. As a result, the petitioner fell on the road and sustained injuries. Immediately after accident, he was shifted to Venkatarama Hospital, Vizianagaram, thereafter referred to Visakhapatnam for better treatment, where the Doctors found fracture to his right leg, right wrist, right leg finger and he was treated from 15.04.2019 to 19.04.2019. Surgeries were conducted, implants were fixed. He was discharged with advice to take medicines. The Petitioner was earning Rs.800/- per day by doing his job. He was hale and healthy at the time of accident. Due to the accident, he was unable to attend his regular works. Police have registered Crime No.64/2019 for the offence under Section 337 of IPC. The 1st respondent is the driver and 2nd respondent is the owner of Auto bearing No. AP 35 TB 1938 and the 3rd respondent is the Insurer, the insurance policy was in force by the date of accident, as such the petitioner is entitled for compensation and hence, the Respondents 1 to 3 are jointly and severally liable to pay compensation.

3. The 1st and 2nd respondents remained exparte. The 3rd Respondent filed counter, in which the manner of accident is denied. It is submitted that the Driver of Auto bearing No. AP 35 TB 1938 was not having valid driving license and that the accident was occurred due to contributory negligence of the petitioner as he was doing triple riding at the time of accident, the claim is excessive, hence the petition is liable to be dismissed.

4. On the basis of pleadings, the following issues have been settled by the Tribunal for enquiry:

1) Whether the accident occurred due to rash and negligent driving of Auto bearing No. AP 35 TB 1938, or, whether there is any contributory negligence on the part of petitioner is driving his motorcycle bearing No. AP 35 AE 5222?

2. Whether the petitioner is entitled for compensation? If so, for what amount and from whom?

3. To what relief?

5. During enquiry, the Petitioner examined PWs 1 and 2, and marked Ex.A1 to A.8, and Exhibits X1 to X3. The Respondents did not adduce any oral evidence, but marked the Policy Copy as Exhibit B.1 with consent.

6. Heard arguments of both sides.

7. The learned counsel for the petitioner submitted that the petitioner was working as Proclainer Driver and earning Rs.800/- per day. On that day he, his wife and four year old child were proceeding on his motorcycle, at that time the Auto driven by 1st Respondent came in opposite direction in rash and negligent manner, dashed the motorcycle of the petitioner, the petitioner received fracture injuries and took treatment in different hospitals. He spent an amount of Rs.1,78,536/- towards medicines, he suffered lot of pain and suffering. At present he is not able to move properly as he used to do prior to the accident, as such he is entitled for compensation as claimed.

8. The learned counsel for the Respondent No.3 submitted that the petitioner was riding the motorcycle as triple riding, due to contributory negligence, the accident was occurred, no proof of income and job has been filed by the petitioner, no disability certificate filed, the treatment was given under Arogyasri scheme, the claim is excessive and hence, the petition may be dismissed.

Issue No.1

9. In any accident claim under 166 of MVI Act , the initial burden of proof is on the claimant to prove rash and negligent driving of the offending vehicle by its Driver. In the present case, the petitioner/injured himself examined as P.W.1. He stated about the manner of accident. According to him, he along with his wife and child are proceeded on motorcycle and when reached the place of accident, the Auto driven by the 1st Respondent/Driver came in rash and negligent manner and dashed the motorcycle, due to which they fell down and received injuries. In support of his contention, the

petitioner got marked FIR in Crime No.64/2019 of Jami Police Station as Exhibit A.1, Wound Certificate, MVI Report and Charge Sheet are marked as Exhibits A.2 to A.4.

10. In his cross-examination, he stated that he is having driving license to drive the motorcycle. At the time of accident, three persons are travelling on the motorcycle. He was going on the left side of the road. He denied the suggestion that the accident was occurred as he is unable to control the vehicle with triple riding. It is common practice that children are carried by the couple on Bike. Four year old child cannot be said to be physically developed with growth to say that it was a triple riding on the motorcycle. At best, the respondent can accept the claims for two persons and refuse third person's claim, if any, for the motorcycle. The 3rd Respondent is not the Insurer of the motorcycle, but insurer of the Auto bearing No. AP 35 TB 1938. So far as the Policy for the Auto is concerned, the injured persons would be third parties to the Policy. The third parties can be any number of persons and simply as the petitioner was riding on the motorcycle with wife and child cannot be said to be contributing to the accident. The third respondent has not adduced any evidence to show that the petitioner was negligent in driving the motorcycle with his wife and child. On the other hand, the petitioner produced the FIR and the Charge sheet filed by the police after investigation, which show that due to the rash and negligent driving of the Auto by the 1st Respondent/Driver, the accident was occurred. The 1st Respondent is shown as Accused for the offence under Section 338 of IPC. This finding of fact arrived by the police after investigation has not been challenged by the Insurance Company and holds good so far as the present claim for compensation under Motor Vehicle Act is concerned. Therefore, this Tribunal holds that the accident was occurred due to rash and negligent driving of the Auto by the 1st Respondent Driver.

Issue No.2

11. In motor accident claims for injuries, the compensation is awarded under two heads, one by way of special damages for the pecuniary loss such as medical bills for treatment, transportation, loss of earnings during the period of treatment etc., for which, proof is necessary. Secondly, by way of general damages for pain and suffering, loss of earning capacity due to disability, loss of amenities of life etc. The object of awarding damages is to make good to the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. A person is not only to be compensated for the physical injury, but, also for the loss which he suffered as a result of such accident.

12. In the present case, the petitioner has claimed an amount of **Rs.1,95,000/-** towards transportation to Hospital, medicines and extra-nourishment. Along with his evidence, the petitioner filed X-Rays, Bunch of Medical Bills for Rs.1,78,536/-, Discharge Summaries as Exhibits A.5 to A.8. In his cross-examination, P.W.1 stated that he is having Arogyasri Card and the treatment was given under Arogyasri scheme for the first time. For the second and third time, Arogyasri is not applied. The treatment Doctor is examined as P.W.2. He stated about the treatment given by him for the injury of P.W.1. The patient was treated as in-patient from 15.04.2019 to 19.04.2019. Again the patient was admitted on 17.04.2021 for stiffness of knee at Padmaja Hospital, Gajuwaka and for removal of implants. After treatment, he was discharged on 19.04.2021. He prescribed the medicines under Exhibit A.6. The witness filed the Case Sheet as Exhibits X.1 and X.2. According to him, he assessed the disability at 50% which is partial and permanent disability. He also marked Exhibit X.3 Latest X-Ray dated 30.12.2023. In his cross-examination, he stated that there is Arogyasri facility at Venkatarama Hospital, Visakhapatnam. The patient was treated at Venkatarama Hospital, Visakhapatnam under Arogyasri Scheme. The injuries

are united. He denied that the medical bills under Exhibit A.6 are created to help the patient. He admitted that the patient at present walking freely, but a small limping gait is present. He assessed the disability basing on his physical and oral observation.

13. So, form the evidence of Doctor, the patient took treatment in different hospitals and after two years, he went for removal of implants and underwent another surgery. Therefore, the claim of Rs. 1,95,000/- towards Transportation to Hospital, medicines and extra-nourishment is not excessive. Hence, the same can be awarded.

14. As far as the General Damages in concerned, the petitioner has claimed for Pain and Suffering and Mental Agony at 10,000/-. However, keeping in view the nature of the injuries being fracture injuries and as the petitioner underwent two surgeries on two different occasions for the same injuries, therefore, this Tribunal feels that it is just and proper to ward a sum of **Rs.40,000/-** towards pain and suffering, and mental agony. As regards the compensation for Loss of future amenities and permanent disability is concerned, no Disability Certificate is filed as pointed out by the learned counsel for the Respondent No.3, but the Treatment Doctor on physical assessment, without any tests, based on the X-Ray reports, has assessed the disability at 50%, which is partial, but in his cross-examination, he stated that the patient at present is walking freely, but there is limping gait present. He cannot sit properly and he cannot walk speedily. Therefore, there must be some difference prior to the accident and after the accident in the lifestyle of the petitioner. It is not the case of the petitioner that because of the said injuries, he is unable to do work which he was doing prior to the accident. The petitioner has not produced any evidence about his job and income prior to the accident. Therefore, this Tribunal feels it proper to award **Rs.1,15,000/-** towards compensation for loss of future amenities of life and for permanent disability

which would be just compensation in those circumstances of the present case.

1.	<u>Special Damages:</u> Compensation for transportation to Hospital, Medicines, extra-nourishment	Rs.1,95,000.00
2.	<u>General Damages:</u> Compensation for Pain and Suffering, Mental Agony	Rs. 40,000-00
3	Compensation for loss of future amenities and for permanent disability	Rs. 1,15,000-00
	Total	Rs.3,50,000.00

15. As regards the liability to pay compensation is concerned, the 1st Respondent is Driver, the 2nd Respondent is Owner of the Auto bearing No. AP 35 TB 1938. The vehicle is insured with the 3rd Respondent/Insurance Company and the Policy was in force by the date of accident, as such, the 3rd respondent is liable to pay compensation to the petitioner. The issue No.2 is accordingly answered in favour of the petitioner.

Issue No.3:

16. In the result, the petition is partly allowed with proportionate costs in favour of the petitioner and against the Respondents 1 to 3 jointly and severally. An amount of **Rs.3,50,000/-** (Rupees Three Lakh and Fifty Thousand only) is awarded as compensation to the petitioner with interest at the rate of 7.5% per annum from the date of petition i.e. **16.10.2019** till to-day, thereafter at the rate of 6% per annum from the date of award till the date of realization on the awarded sum of **Rs.3,50,000/-**. The 3rd respondent shall pay the same to the petitioner within **TWO MONTHS** from today.

Advocate Fee is fixed at Rs.3,000/- (Rupees Three Thousand only)

Dictated to Stenographer Grade III, transcribed by her, corrected and pronounced by me in Open Court, on this, the 05th day of March, 2024.

Sd/- Shaik Sikinder Basha

Chairman,
Motor Accidents Claims Tribunal-cum-
IV Additional District Judge, Vizianagaram.

Appendix of Evidence
Witnesses examined

For Petitioner:

PW1: Chalumuri Suresh
PW2: Dr M. Kishore

For Respondents:

None

Documents marked

For Petitioner:

Ex.A1: Attested copy of FIR in Cr.No. 64/2019 of Jami PS
Ex.A2: Attested copy of Wound Certificate
Ex.A3: Attested copy of MVI Report
Ex.A4: Attested copy of Charge sheet
Ex.A5: X-Rays in 10 numbers
Ex.A6: Bunch of Medical Bills for Rs.1,78,536/-
Ex.A7: Discharge Summary, Apollo Hospital, Visakhapatnam
Ex.A8: Discharge Summary, Padmaja Hospital, Gajuwaka

Ex.X1: Case Sheet maintained by Venkatarama Hospital, Visakhapatnam
Ex.X2: Case Sheet maintained by Padmaja Hospital, Gajuwaka
Ex.X3: Latest X-Ray

For Respondents:

Ex.B1: Policy Copy

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