THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.3755 of 2011

JUDGMENT:

Aggrieved by the Award dated 18.01.2011 in O.P.No.173 of 2001 passed by the Chairman, MACT-cum-I Additional District Judge, at Mahabubnagar (for short "the Tribunal"), the 2nd respondent in the O.P/ United India Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 10.02.1999, he and his friend started from Kothakota in a jeep bearing No.AP 22 A 9153 of his friend to go to Nadigama village to attend a marriage reception and at about 8:30 PM, when the said jeep was going on N.H.7 in the limits of Macharam village of Jadcherla Mandal, the driver of the jeep drove it in a rash and negligent manner and dashed against the side wall of the culvert. Thereby, the claimant and others sustained injuries. Immediately, the claimant was shifted to O.G.H, Hyderabad for treatment where his right foot upto ankle was amputated and a rod was inserted in the right thigh. Thus, the claimant suffered permanent disability to his right leg. It is averred that the accident was occurred due to the fault of driver of the jeep. On these pleas, the claimant filed O.P.No.178 of 2001 under Section 166 of Motor Vehicles Act (for short "M.V.Act") and claimed Rs.6,00,000/- as compensation against respondents

1 and 2 who are owner and insurer of the offending jeep.

b) Respondent No.1 remained ex-parte.

c) Respondent No.2/Insurance Company filed counter denying all the material averments made in the petition and contended that R1 is not the registered owner of the vehicle and has no insurable interest and that the driver who drove the vehicle did not possess any valid and effective driving licence, which is clear violation of terms and conditions of the policy. R2 denied the age, avocation and income of the claimant, manner of accident and nature of injuries sustained by the claimant. Finally, R2 contended that compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the O.P.

d) The then Presiding Officer of the Tribunal tried this O.P and dismissed the same on issue No.1 vide judgment dt: 24.04.2006. Aggrieved by the same, an appeal was preferred in CMA No.1625 of 2006 and the same was allowed and case was remanded to the Tribunal to give an opportunity to the claimant to prove the rash and negligent driving by the driver of the offending vehicle. Hence, the Tribunal gave further opportunity to the claimant and considered the evidence placed by him.

e) During trial, PWs.1 to 3 were examined and Exs.A1 to A.28 were marked on behalf of claimant. No oral or documentary evidence was adduced on behalf of respondents.

f) The Tribunal considering the oral and documentary evidence held that driver of the offending jeep was responsible for the accident. Compensation is concerned, the Tribunal awarded Rs.5,29,132/- with proportionate costs and interest at 7.5% p.a. under different heads as follows:

Pain and suffering	Rs. 40,000-00
Extra-nourishment	Rs. 5,000-00
Attendant charges	Rs. 5,000-00
Transport charges	Rs. 3,000-00
Medical expenses	Rs. 27,332-00
Loss of dependency due to disability	Rs. 4,48,800-00
Total:	Rs.5,29,132-00

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they stood before the lower Tribunal.

4) Heard arguments of Sri Ravishankar Jandhyala, learned counsel for appellant/Insurance Company and Sri L.Harish, learned counsel for R1/ claimant. Notice sent to R.2 was unserved.

5a) Challenging the award, Sri Ravishankar Jandhyala, learned counsel for appellant firstly argued that in this case FIR was lodged long after the accident and the charge sheet was also filed belatedly which all go to show that the claimant has some how managed to see that charge sheet is filed to claim compensation. It also gives rise a suspicion as to the involvement of the jeep in question and the fault of jeep driver which are manipulated. The Tribunal did not consider these aspects in a proper perspective, as otherwise it should have dismissed the claim, he contended.

b) Secondly and alternatively, questioning liability of Insurance Company, learned counsel argued that even assuming that jeep was involved in the accident and even further assuming that policy was in force Insurance Company cannot be mulcted with the liability for the reason the jeep in question is a private vehicle but it was hired by family of the claimant and travelled in it as hired passengers and hence, there is clear violation of conditions of policy and for that reason also the insurance Company is not liable for the claim.

c) Thirdly, challenging the compensation he argued that though the claimant suffered amputation still he continued in the same job i.e. as Dark Room Assistant in Area Hospital, Gadwal and gets same salary without any deduction and in that view of the matter, he is not entitled to compensation for loss of earning power. But the Tribunal erroneously awarded compensation of Rs.4,48,800/- in that regard and therefore, the said compensation needs to be deducted. To buttress his argument he relied upon by the decision of the Apex Court in ***Raj Kumar vs. Ajay Kumar*[1]*.*** He thus prayed to allow the appeal and exonerate the Insurance Company and alternatively for reducing the compensation suitably.

6a) Per contra, while supporting the award, learned counsel for respondent/claimant argued that the delay in lodging FIR and consequent delay in investigation and filing charge sheet etc. were sufficiently explained with the help of record by the claimant after remand of the matter in OP by the High Court and in view of sufficient explanation the appellant/Insurance Company cannot now argue that unexplained delay gives rise a doubt about involvement of vehicle in question and fault of the driver.

b) Nextly, he argued that the claimant and his family members have not hired the vehicle and they were gratuitous passengers and therefore, the risk was covered. He argued that the Insurance Company has not taken any plea touching the non-coverage of risk of the claimant under the policy in its counter and it has also not produced the policy and therefore, it cannot take such a plea for the first time in the appeal.

c) Then, while supporting the compensation, he argued that the claimant suffered amputation of his right leg below knee and considering his fate the Tribunal awarded compensation which in fact in many respects insufficient since it has not granted any compensation for purchasing prosthesis and therefore, there is no need to further reduce the compensation. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for

determination is:

“Whether the award passed by the Tribunal is factually and legally sustainable?”

8) **POINT**: The first argument of appellant is with regard to delay in lodging FIR and consequent delay in investigation and filing charge sheet. In view of this delay, it is argued that the involvement of jeep and fault of the driver were highly doubtful.

a) In this context, record shows that accident was occurred on 10.02.1999; Ex.A1—FIR was lodged on 01.04.1999 whereas Ex.A21—charge sheet was filed on 24.10.2006. Regarding the delay, the evidence of PW1—complainant and PW2—his brother-in-law is that immediately after the accident they informed the hospital authorities that it was a road traffic accident hoping that hospital authorities would inform the police, but they did not choose to inform though it was a Medico-legal case. Therefore, knowing about non-registration of a case, PW1 complained before the Police, Jedcherla; basing on which Ex.A1—FIR was registered. In this process, delay was occurred. Further, the police intentionally did not investigate the case to favour the driver of jeep as he is the brother-in-law of Head Constable—Anwar Hussain. He took up the matter to Superintendent of Police, Mahabubnagar who caused enquiry and suspended the two Head Constables viz. Rajagopal Reddy and Anwar Hussain for their dereliction of duties in not investigating the case vide Ex.A27 proceedings.

Thus, the claimant has produced ample material for the inevitable delay occurred in lodging FIR and consequent delay in investigation and filing charge sheet. Be that it may, police after investigation found that jeep bearing No.AP 22A 9153 was very much involved in the accident and the accident was occurred due to the fault of jeep driver and accordingly charge sheeted him for the offence under Section 338 IPC. In view of cogent evidence on record, there can be no suspicion about involvement of jeep in question and fault of jeep driver. Hence, the contention of appellant/Insurance Company cannot be accepted.

b) Then, the next argument of appellant is that the policy was issued treating the jeep as a private vehicle but contrary to the terms of the policy, vehicle was hired to the claimant's family and therefore, Insurance Company is not liable to answer the claim for the breach of terms of the policy. This argument does not carry conviction for the reasons that such plea was not even remotely taken in the counter nor evidence was adduced to that effect and most importantly, the Insurance Company was not bother to file policy copy for scrutiny of the Court to consider its contention. In the absence of the policy, it cannot be concluded basing only on the contention of Insurance Company that the policy was issued treating the vehicle as a private vehicle. Hence, this argument is rejected.

c) The next argument is that though the claimant is an amputee he attends his job and getting the salary as before the accident and therefore, he is not entitled to compensation for loss of dependency. I find some force in this contention. The Tribunal awarded Rs.4,48,800/- considering 50% of disability. Though the said amount was awarded under the caption loss of dependency on account of disability, it appears that the said amount was awarded for the loss of earning power due to disability.

9) In the case of ***Raj Kumar*** (1 supra) the Apex Court had exhaustively dealt with the method and manner of awarding compensation for disability caused to a person in a motor vehicle accident. Incidentally the Apex Court observed thus:

> *"Para 14: For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning*

capacity.”

Thus, the Apex Court held that when the physical disability did not result in loss of employment and the disabled still continued in the same job, there may not be any need to award compensation under the head loss of future earning, but he may be awarded compensation under the head loss of amenities as a consequence of disability. Keeping the above guidelines, it has to be seen whether there is any loss of earning power to claimant and whether he deserves compensation in that regard. It appears from the evidence that prior to accident claimant was working as Dark Room Assistant in Area Hospital, Gadwal and even after amputation also he continued in the same job. In the cross-examination he stated that he is attending to duty with the help of crutches. So, he is continued in the job and he did not speak of any loss of income or reversion to a lower grade. In that view of the matter, having regard to the Apex Court judgment, he will not be entitled to compensation for loss of earning power at the present. However, he will be entitled for compensation for loss of basic amenities in life and probable loss of earning power for post-retirement period if he seeks to employ himself in any job. At present, he suffered loss of basic amenities as he cannot undertake his day-to-day pursuits without depending on others. Similarly, he will be loosing future job opportunity due to disability at post- retirement stage. As there is no immediate loss of earnings as per the record but there is a loss of basic amenities and loss of future earnings, compensation awarded by the Tribunal for loss of dependency needs to be suitably revised. Hence, the amount of Rs.4,48,800/- awarded by the Tribunal is reduced to Rs.4,00,000/- and awarded the said amount towards loss of amenities and future loss of earning power.

10) In the result, this MACMA filed by the Insurance Company is partly allowed and ordered as follows:

(a) Compensation awarded by the Tribunal is reduced by Rs.***48,800/***- with proportionate costs and interest @ 7.5% from the date of OP till the date of realisation.

(b) Respondents in the O.P are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.

(c) No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Dt.28.10.2015
scs/Murthy

[1] (2011) 1 SCC 343