THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.992 of 2009

JUDGMENT:

Aggrieved by the Award dated 29.08.2008 in M.V.O.P No.6 of 2005 passed by the Chairman, M.A.C.T-cum- V Addl. District and Sessions Judge, Kurnool at Nandyal (for short “the Tribunal”), the Claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a. The claimant’s case is that on 29.04.2004, when the claimant along with her family members was travelling in an Indica Car Bearing No.AP 21 H 5681 and the Car reached near Reddypalle Cheruvu Katta of Pullampeta Mandal on Kodur-Rajampet high way, an Eicher Van bearing No. AP 04 U 5662 being driven by its driver in a rash and negligent manner came in opposite direction and dashed against the Car. Thereby, the claimant and other persons who were travelling in the Car sustained grievous injuries. It is averred that Van driver was responsible for the accident and because of the accident, the claimant incurred heavy medical expenditure and further, she suffered disability. On these pleas, the claimant, filed MVO.P.No.6 of 2005 under Sections 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondent Nos.1 and 2, who are the owner and insurer of the Eicher Van and Respondent Nos.3 and 4, who are owner and insurer of the Car and claimed Rs.5,00,000/- as compensation.

b. Respondent No.1 remained *ex parte*.

c. Respondent No.2 filed Counter denying all material averments and urged to put the claimant in strict proof. It contended that the accident was occurred due to the negligence of the driver of Indica Car and the said driver and also the driver of van had no valid and effective driving licence at the time of accident and hence the insurer is not liable to pay any compensation. It further contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d. Respondent No.3 and 4 filed Counters denying all material averments and urged to put the claimant in strict proof. They contended that the accident was occurred due to the negligence of the driver of Eicher Van but not due to the driver of the Car and the driver of the car was having valid and effective driving licence at the time of accident and hence, the respondent Nos.1 and 2 alone are liable to pay the compensation.

e. Common evidence was adduced in this O.P and other connected O.Ps. On behalf of petitioners in all the O.Ps, PWs.1 to 4 were examined and Exs.A.1 to A.16 and Exs.X1 to X.5 were marked. On behalf of respondents, RWs.1 to 4 were examined and Exs.B.1 and B.2 were marked.

f. The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.1,61,670/- with costs and interest at 7.5% p.a under different heads as follows against 1st respondent and dismissed the claim against other respondents:

Compensation for fracture of ribs Rs. 18,000-00

Compensation for fracture of

lower third of both femurs Rs. 40,000-00

Medical expenditure Rs. 87,670-00

Transportation charges Rs. 3,000-00

Pain and suffering Rs. 10,000-00

Extra nourishment charges Rs. 3,000-00

Total Rs.1,61,670-00

Hence, the appeal by Claimant.

3) Heard arguments of Sri B.S.Reddy, learned counsel for appellant/ claimant and Smt.S.A.V.Ratnam, learned counsel for respondent No.2/ Insurance Company. Notices sent to respondents 1 and 4 were returned unserved. Though notice sent to R.3 was served but there is no representation on his behalf, hence treated as heard.

4) The parties in this appeal are referred as they are arrayed before the lower Tribunal.

5 a) Opposing the award learned counsel for the appellant/claimant firstly argued that the Tribunal erred in totally exonerating the 2nd respondent/ Insurance Company holding that the driver of the van possessed licence to drive Light Motor Vehicle (LMV) (Transport) and the crime vehicle was a HMV. He argued that as the Eicher van is a transport and Medium Motor Vehicle (MMV) and the driver possessed a valid LMV (Transport) licence which is slightly a different one as the claim relates to third party and policy was in force, the Tribunal ought to have ordered Insurance Company to pay compensation and recover from the insured. In this context, he relied upon the following decisions:

i. ***S. Iyyapan vs. United India Insurance Company Limited and other***

ii. ***Bajaj Allianz General Insurance Co. Ltd. vs. Kalaguri Naganna and others***

b) Secondly, he argued that compensation awarded is too low and inadequate as the Tribunal failed to consider the total medical expenditure incurred by the claimant under Exs.A.10 and A.12 which roughly amount to Rs.3,00,000/- but the Tribunal awarded an imaginary amount of Rs.87,670/- only and further, the Tribunal did not consider the 40% of disability suffered by the claimant and not award any compensation in that regard. Due to all these mistakes, he argued, compensation was drastically reduced. He relied upon the decision reported in ***Arun Kumar Agarwal and another vs. National Insurance Company Limited and others*** on the aspect of the method of computation of compensation in respect of a housewife who was victim of accident.

He thus prayed to allow the appeal and fasten liability on the Insurance Company and also enhance compensation suitably.

6) Per contra, learned counsel for second respondent/Insurance Company, while supporting the award contended that the driver possessed licence to drive only LMV(transport) whereas the crime vehicle was Heavy Motor Vehicle(HMV) and therefore, he was not authorised to drive the type of vehicle involved in the accident and the owner knowingly allowed such driver to drive the vehicle and thereby committed breach of the terms of the policy and hence, the lower Tribunal rightly exonerated the Insurance Company from the liability. Learned counsel further argued that the compensation awarded under different heads was just and reasonable. In expatiation, learned counsel submitted that though the claimant produced Ex.A.11—disability certificate showing as if she suffered 40% disability in her lower limbs, the evidence of the Doctor who treated her would show that she was alright at the time of discharge and could able to attend all her activities and therefore, the Tribunal rightly did not consider her alleged disability. The medical expenditure admitted was also just and reasonable and there was no need to reconsider it. She thus prayed to dismiss the appeal.

7) In the light of the above rival arguments, the point for determination in this appeal is:

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

8) **POINT**: The accident, involvement of the car bearing No.AP 21 H 5681 and van bearing No.AP 04 U 5662 and claimant suffering injuries are all admitted facts.

a) The first contention of appellant is that the Tribunal ought to have directed Insurance Company to pay compensation and recover from the insured. In this context, a perusal of the evidence shows that the accident was occurred due to the fault of driver of the tempo Eicher AP 04 V 5662 namely P.Krishnamraju. As per Ex.X.1—driving licence extract, the said driver holds driving licence to drive LMV(transport) for the period 10.05.1988 to 24.02.2008. Whereas, the crime vehicle is a tempo Eicher and a transport goods vehicle. As per the evidence of RW.4—the-then M.V.Inspector, Rajampet, the crime vehicle i.e. Eicher is a medium goods vehicle and it is a transport vehicle. So from the record, it is clear that the driver was not authorised to drive Medium Motor Vehicle as he possessed licence to drive only LMV (transport).

9) Now the point is whether on this count, the Insurance Company can be totally exonerated from the liability. In ***S.Iyyappan***'s case(1 supra), in similar circumstances when the driver held licence to drive Light Motor Vehicle but drove a Commercial Vehicle, the Apex Court taking into consideration that the policy was in force and the claim was of a third party, directed the Insurance Company to pay compensation and then recover the amount from the insured. The ratio in that case squarely applies to the instant case, because in this case also the claim is that of a third party and the policy was in force.

a) In ***Kalaguri Naganna***'s case(2 supra) also, this Court having observed that the driver who was driving auto a transport vehicle, possessed licence to drive only a non-transport vehicle, held that mere holding a different driving licence cannot be regarded as a fundamental breach and directed the Insurance Company to pay compensation and recover from the insured.

b) So going by the above precedents, the Insurance Company can be directed to pay compensation and recover from the insured.

10) The next contention of the appellant is that the compensation awarded is too low and inadequate inasmuch as the Tribunal failed to consider the disability suffered by the claimant and heavy medical expenditure incurred by her.

a) In this context, a perusal of the award shows that the Tribunal awarded Rs.87,670/- towards medical expenditure and disability is concerned, the Tribunal did not accept 40% disability certified by RW.2 for the reason that PW.3—another Doctor who treated her at Yashoda Hospital, Hyderabad and performed operation, deposed that the operation was successful and her condition at the time of discharge was stable and that she can attend her day-to-day activities. Basing on his evidence, the Tribunal it appears opined that the disability certified by RW.2 was excessive and even if she suffered any disability, it was only a partial and temporary one. Therefore, the Tribunal did not award any compensation for the alleged disability. Hence the above findings of the Tribunal needs a scrutiny in this appeal.

b) The evidence of PW.2 would show that immediately after accident she was taken to Government General Hospital, Rajampeta for first aid and from there to S.V.R.R.G.G. Hospital, Tirupathi for emergency treatment. On the next day, she was taken to Kalyani Hospital, Kurnool and after providing initial treatment there, she was shifted to Yashoda Hospital, Hyderabad for better treatment. It appears, sometime after discharge from Yashoda Hospital, she was again treated in Kalyani Hospital, Kurnool.

c) Be that it may, Ex.A.8—wound certificate and Ex.X.1—case sheet would show that she suffered fracture of both femurs at knee joint level and also suffered fracture of 2 to 6 ribs (right side) and 7th rib (left side). Then PW.3—Orthopedic Surgeon in Yashoda Hospital, Hyderabad deposed that he performed surgery to her both femurs on 03.05.2004 with nailing. His evidence is that the operation was success and at the time of discharge she was in a stable condition and she can attend her personal work and carryout the activities of daily living. Then the evidence of PW.4—Orthopedic Surgeon in G.G.H, Kurnool and a Consultant in Kalyani Hospital, Kurnool is that sometime after discharge from Yashoda Hospital, she was re-admitted in Kalyani Hospital, Kurnool on 22.12.2004 due to implant failure in left femur. So she was operated upon on 24.12.2004 and another nail was inserted into her left funnel and on 25.05.2006, she was readmitted and at that time nail was removed from her left femur. This Doctor who removed the nail deposed that she cannot do manual labour and agricultural works. In the cross examination, he stated that he removed the nail from the left femur because of breaking of the previous nail.

d) Then RW.2 who is a Civil Surgeon and Member of District Medical Board, Nandyal, spoke about Ex.A.11—disability certificate. He certified her disability in lower limbs at 40% mentioning in Ex.A.11 that the claimant is limping and feeling difficulty in squatting and sitting cross-legged. So when the evidence of PWs.3, 4 and RW.2 is cumulatively studied, we can understand that at the initial discharge from Yashoda Hospital, Hyderabad her condition was stable and so PW.2 stated that her condition was good. However, subsequently during December, 2004 her nailing in left femur was broken and so she was operated upon by PW.4, who inserted another nail in her left femur and again removed it in May, 2006. Basing on her condition at that stage, PW.4 stated that she cannot do manual labour and agricultural works. It appears, her condition was not improved and as she was limping and facing difficulty in squatting and sitting cross-legged, RW.2 certified that she faced 40% disability. Unfortunately, the lower Tribunal took her condition as deposed by PW.2 at the time of her initial discharge and held as if RW.2 gave an excess percentage of disability and ultimately did not award any compensation. However her subsequent condition shows she suffered disability. Though the claimant is a housewife, her physical disability effects adversely to certain extent in discharging her household duties. Therefore, though she does not deserve compensation for loss of earning power which is not there, still she deserve compensation for loss of basic amenities. The ***Arun Kumar Agarwal***'s case (3 supra), cited by the appellant, may not be much helpful to him because that was the case of a death of a housewife wherein Hon'ble Apex Court has given guidelines for computation of compensation. Fortunately, it is only a case of disability of a housewife. Hence, considering her loss of basic amenities due to 40% disability, she is awarded **Rs.40,000/-**.

11) Then the medical expenditure is concerned, as rightly argued, the Tribunal has not properly evaluated the medical expenditure covered by Exs.A.10 and A.12. Ex.A.10 are the bunch of medical bills issued by Yashoda Hospital, where as Ex.A.12 are the bunch of medical and transport bills issued by different hospitals. Ex.A.10—bills are covered by Ex.A.12. The total amount covered by Ex.A.12 is about Rs.3,00,000/-. However there is no proper proof for all those bills. Hence, having regard to the grievous nature of injuries and treatment in different hospitals, the medical expenditure is fixed at **Rs.1,60,000/-**. Thus the total compensation payable to the claimant under different heads is as follows:

Compensation for fracture of ribs Rs. 18,000-00

Compensation for fracture of

lower third of both femurs Rs. 40,000-00

Medical expenditure Rs.1,60,000-00

Transportation charges Rs. 3,000-00

Pain and suffering Rs. 10,000-00

Extra nourishment charges Rs. 3,000-00

Loss of basic amenities Rs. 40,000-00

Total Rs.2,74,000-00

Thus the compensation is enhanced by Rs.1,12,330/- (Rs.2,74,000/- minus Rs.1,61,670/-).

12) In the result, the M.A.C.M.A. filed by the claimant is allowed and ordered as follows:

a. The compensation awarded by the Tribunal is enhanced by Rs.1,12,330/- with proportionate costs and interest @ 7.5% per annum from the date of O.P till the date of realization against respondents 1 and 2 only; and

b. Respondent No.2/Insurance Company in the O.P is directed to deposit the compensation amount within two (2) months from the date of this judgment at first and recover the same from the respondent No.1/owner/insured in the OP treating this judgment as decree, failing which execution can be taken out against them.

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

U. DURGA PRASAD RAO, J

Date: 13.11.2015

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