

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. Nos.667 AND 814 OF 2009

-

COMMON JUDGMENT:

M.A.C.M.A.No.667 of 2009 is preferred by the claimant and M.A.C.M.A.No.814 of 2009 is filed by the 2nd respondent – Insurance Company assailing the judgment and award dated 04.11.2008 passed in O.P.No.2711 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XII Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 01.11.2006 at about 6.00 A.M., the petitioner was proceeding towards Ramanthapur Main Road, Gokhale Nagar by walk. In the meanwhile, the rider of Bajaj Pulsar bearing

No.AP 11S 5754 came from Uppal side in a rash and negligent manner and hit the petitioner. The accident occurred due to rash and negligent driving of the rider of the motor cycle against whom the Station House Officer, Uppal, registered a case in Crime No.902 of 2006 for the offence under Section 338 I.P.C. Due to accident, the petitioner sustained compound commutated fracture of both bones of right leg. The petitioner took treatment as inpatient for a long time and his right leg was amputated below the knee and he spent Rs.2,00,000/- towards medicines and treatment. By the time of accident, the petitioner was aged about 48 years and used to earn Rs.6,000/- per month as Supervisor of the civil contract. The 1st respondent is the owner of Bajaj Pulsar bearing No.AP 11S 5754, which was insured with the

2nd respondent Insurance Company with effect from 22.06.2006 to 22.06.2007. Therefore, respondents 1 and 2 are jointly and severally liable to pay compensation of Rs.5,00,000/- to the petitioner. The petitioner filed petition under Section 163A and 166 of Motor Vehicles Act, 1988.

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

5. Respondent No.2 filed counter denying all the averments made in the petition *inter alia* contending that there is a delay of four days in lodging the complaint. This respondent is not liable to pay compensation unless the petitioner establishes that the rider of the motor cycle was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

(1) Whether the accident resulting in injuries to petitioner occurred owing to the rash and negligent riding of rider of Bajaj Pulsar motor cycle bearing No.AP 11S 5754?

(2) Whether the petitioner is entitled for compensation, if so to what amount and from whom?

3. To what relief?

7. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A1 to A11 were marked. On behalf of the respondents, RWs.1 to 3 were examined and Exs.B1 to B5 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the rider of the motor cycle bearing No.AP 11S 5754, which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.3,00,000/- directing respondents

1 and 2 to pay compensation jointly and severally with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. However, respondent No.2 is at liberty to recover the compensation amount from respondent No.1.

9. Feeling aggrieved by the judgment and award of the Tribunal, respondent No.2 – Insurance Company preferred M.A.C.M.A.No.814 of 2009.

10. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant also filed M.A.C.M.A.No.667 of 2009.

11. Heard Sri C. Vikram Chandra, learned counsel for the petitioner, and Sri Jayanti S.C. Sekhar, learned Standing Counsel for the Insurance Company.

12. The contention of the learned counsel for the petitioner is three fold: (i) the Tribunal had not rightly assessed the monthly income of the petitioner ii) the Tribunal had not awarded compensation under the heads extra nourishment, transport charges, pain and suffering etc., iii) the finding of the Tribunal that the rider of the motor cycle was not having valid and effective driving licence as on the date of the accident is not sustainable.

13. Per contra, the learned counsel for respondent No.2 submitted that the Tribunal, having held that the rider of the motor cycle was not having valid and effective driving licence, wrongly fastened the liability on respondent No.2. He further submitted that the Tribunal had not rightly considered the aspect of delay in lodging complaint and the amount of compensation awarded under various heads is just and reasonable to meet the ends of justice.

14. Basing on the rival contentions, the following points arise for consideration in these appeals:

1. Whether the delay in lodging the complaint itself is a ground to dismiss the petition?
2. Whether the Tribunal has awarded just and reasonable compensation to the petitioner or not?
3. Whether the Tribunal is not justified in directing respondent No.2 to satisfy the award and recover the same from respondent No.1?

15. **Point No.(1):** The predominant contention of the learned counsel for respondent No.2 is that there is a delay of four days in lodging complaint which creates a doubt with regard to the factum of accident and sustaining injuries by the petitioner. As per the findings of the Tribunal, the accident occurred due to rash and negligent driving of the rider of the motor cycle, which resulted injuries to the petitioner.

16. A perusal of Ex.A1, copy of First Information Report, reveals that the Station House Officer, Uppal, registered a case on 05.11.2006. It is a known fact that

immediately after the accident, the injured person will be shifted to hospital for immediate treatment. Sometimes, the patient may not be in conscious state of mind due to trauma. A perusal of the record further reveals that the son-in-law of the petitioner lodged the complaint. Mere delay in lodging complaint by itself is not a sufficient ground to discard the version put-forth by the petitioner. The Police investigated into the matter and filed charge sheet, Ex.A2. If really the accident has not occurred as stated by the petitioner, the same might have reflected in the charge sheet. The Investigating Officer arrived at a conclusion that the accident occurred due to the rash and negligent driving of the rider of the motor cycle. A perusal of Ex.A3, Medico Legal Record, reveals that the petitioner was admitted in NIMS hospital on 01.11.2006 itself. It is also mentioned that the petitioner was not in conscious state of mind at the time of admission. It is further mentioned in Ex.A3 that the petitioner sustained injuries in a road accident that occurred on 01.11.2006. If really the accident was not occurred as stated by the petitioner, what prevented respondent No.2 to appoint the investigator to ascertain the truthfulness or otherwise of the version put-forth by the petitioner. The version put-forth by the petitioner is supported by the recitals of Ex.A1, copy of First Information Report, Ex.A2, copy of charge sheet and Ex.A3, Medico Legal Report issued by NIMS hospital. Taking into consideration the oral and documentary evidence available on record, I am unable to accede to the contention of the learned Standing Counsel for respondent No.2 that the delay in lodging the complaint itself is a valid ground to dismiss the petition.

Point No.(2):

17. A perusal of the record reveals that the petitioner's right leg was amputated below the knee. As per the testimony of PW.2, the Medical Officer, the petitioner incurred 60% disability due to amputation. The petitioner has taken treatment under the supervision of PW.2 in NIMS hospital, Hyderabad. The factum of amputation of petitioner's right leg below the knee is not disputed by respondent No.2. The functional disability incurred by an injured person cannot be equated with loss of earnings in each and every case. Undoubtedly, the petitioner may not attend to each and every work due to amputation of his right leg. The petitioner may not be in a position to earn as he used to earn prior to amputation of his right leg. Except the self-serving testimony of PW.1, there is no other convincing evidence to prove that

the petitioner was earning Rs.6,000/- per month as on the date of accident. It is not uncommon to exaggerate the income of the petitioner to claim more compensation. If really the petitioner was working as a Supervisor, what prevented him to examine the Contractor or to produce the documentary evidence to substantiate his stand. In the absence of documentary evidence, some guess work is inevitable to determine the income of the petitioner. The Tribunal, without taking into consideration the age and other relevant factors, granted an amount of Rs.2,50,000/- to the petitioner. Even by attending the coolie work, the petitioner may earn Rs.3,000/- per month. The amputation of right leg below the knee certainly would affect the earning capacity of the petitioner to the extent of 60%. The loss of earnings per month comes to Rs.1,800/- (Rs.3,000 x 60/100). The loss of future earnings is Rs.2,80,800/- (Rs.1,800 x 12 x 13). Basing on the oral and documentary evidence available on record, the Tribunal awarded Rs.50,000/- towards medicines. The petitioner took treatment for a long time in the hospital. The Tribunal has not awarded any amount towards extra nourishment. Taking into consideration the nature of the injuries sustained by the petitioner, this Court is inclined to award Rs.5,000/- towards extra nourishment. This Court is also inclined to award an amount of Rs.5,000/- towards transportation charges. Due to amputation of the right leg, the petitioner might have suffered a lot. However, the Tribunal has not considered this aspect. Taking into consideration the nature of injuries sustained by the petitioner, this Court is inclined to award an amount of Rs.30,000/- towards pain and suffering. The amount of compensation to which the petitioner is entitled to under various heads is as follows:

1.	Pain and sufferings	Rs. 30,000/-
2.	Extra nourishment	Rs. 5,000/-
3.	Transportation charges	Rs. 5,000/-
4.	Medical expenses	Rs. 50,000/-
5.	Loss of future earnings	Rs.2,80,800/-
	Total:	Rs.3,70,800/-

The amount of compensation awarded under the above heads is just and reasonable to meet the ends of justice.

Point No.(3):

18. The other contention of the learned counsel for respondent No.2 is that respondent No.1 had valid driving licence. Therefore, there is no obligation on the part of respondent No.2 to indemnify the liability of respondent No.1.

19. The oral testimony of RWs.1 to 3 coupled with Ex.B4 reveals that the rider of the motor cycle was having valid and effective driving licence to drive the light motor vehicle non-transport. The oral testimony of RW.3 coupled with Ex.B5 clearly reveals that there is some ambiguity in Ex.B3, copy of the driving licence produced by the petitioner in another O.P. The fact remains that the rider of the motor cycle was not having valid and effective driving licence to drive the motor cycle as on the date of accident.

I fully agree with the findings recorded by the Tribunal on this aspect. The Tribunal directed respondent No.2 to satisfy the award and recover the same from respondent No.1 in view of the provisions of the Motor Vehicles Act, 1988.

20. The petitioner filed O.P.No.1322 of 2006 on the file of the

I Additional District and Sessions Judge, Ranga Reddy. The petitioner also filed O.P.No.2711 of 2006 on the file of

XXII Additional Chief Judge, City Civil Court, Hyderabad. Learned counsel for the petitioner across the bar produced the docket order in O.P.No.1322 of 2006. A perusal of the same reveals that O.P.No.1322 of 2006 was dismissed on 09.03.2011, which was prior to passing of the order in O.P.No.2711 of 2006.

21. A perusal of Ex.B4 clearly reveals that the petitioner had obtained a driving licence to drive Light Motor Vehicle. A person, who was having valid and effective driving licence to drive the Light Motor Vehicle Non-transport, can drive two wheeler

without any problem. The alleged violation would not amount to fundamental breach of terms and conditions of Policy, which entitles respondent No.2 to absolve from the liability. The Tribunal rightly considered all these aspects and gave liberty to respondent No.2 to recover the amount from respondent No.1.

22. In the result, M.A.C.M.A.No.667 of 2009 is allowed in part by enhancing the quantum of compensation from Rs.3,00,000/- to Rs.3,70,800/- directing respondents 1 and 2 to pay the same with interest at 7.5% per annum from the date of petition till the date of deposit. On deposit of compensation amount, Respondent No.2 is entitled to recover the same from respondent No.1.

23. M.A.C.M.A.No.814 of 2009 is hereby dismissed. There shall be no order as to costs.

24. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date:21.04.2015

KH