

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

M.A.C.M.A.Nos.422 of 2009 and 2716 of 2008

COMMON JUDGMENT:

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M.A.C.M.A.No.422 of 2009 is filed by the claimant seeking enhancement of the compensation awarded while M.A.C.M.A.No. 2716 of 2008 is filed by United India Insurance Company Limited, Rangampet, Warangal questioning the very award.

Since these two appeals are directed against the order dated 14.06.2004 passed in O.P.No.1493 of 2002 on the file of the Motor Vehicles Accidents Claims Tribunal (I Additional District Judge) at Warangal, they are being disposed of by this common judgment.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in O.P.

The facts in issue are as under:

The appellant/claimant filed O.P.No.1493 of 2002 under Section 166 of the M.V. Act claiming compensation of Rs.5,50,000/- for the injuries sustained by him in a road accident which took place on 22.05.2002. It is stated that on that day at about 10.30 a.m., while the petitioner/claimant was going by walk at Gopalaswamy Temple bus stop, Warangal an Auto bearing No.A.P.36-V-1997, owned by the 1st respondent and insured with the

2nd respondent, driven by its Driver in a rash and negligent manner at a high speed came from behind and hit the claimant. As a result of the accident the claimant fell down and sustained injuries on his neck, head and spinal cord. In respect of the above incident, a case in Crime No.122 of 2002 for an offence punishable under Section 338 IPC came to be registered against the Driver of the Auto. Immediately, after the accident the Driver of the Auto and one witness shifted the petitioner to MGM Hospital, wherein he was treated as an inpatient for nearly 10 days. On 03.06.2002 he was discharged from the Hospital with an advice to take bed rest for six months. It is stated that the petitioner received head injury, due to which the movements of the petitioner are totally crippled. At the time of the accident the petitioner was working as a Mason and earning Rs.4,000/- per month. Since the accident totally crippled his life, the O.P. in question was filed claiming compensation of Rs.3,00,000/- initially, which was subsequently enhanced to Rs.5,50,000/-.

The 1st respondent, who is the owner of the vehicle, filed his counter stating that there was no rashness or negligence on the part of the Driver of the Auto and that the petitioner sustained injuries due to a fall on the road divider. It is stated that no explanation is forthcoming as to why there was abnormal delay in lodging the report. In any event it is stated that since the vehicle was insured with the 2nd respondent, the Insurance Company alone is liable to

pay compensation if any.

The 2nd respondent, who is insurer of the above vehicle, filed its counter denying its liability to pay the compensation and categorically stated that the petitioner did not sustain injuries in the manner spoken to by him and no cogent evidence is placed on record to show that the petitioner sustained injuries due to rash or negligent driving by the Driver of the Auto.

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

1. Whether the accident took place on account of the rash and negligent driving of the Auto bearing No.A.P.36-V-1997 by its driver or due to negligence on part of the petitioner himself?
2. Whether the petitioner is entitled to any compensation. If so, to what amount and from whom?
3. To what relief ?

In support of his case, the claimant himself was examined as P.W.1 and also examined the Doctor, who treated him at MGM Hospital, Warangal as P.W.2. He also got marked Exs.A-1 to A-12 in support of his plea. No oral or documentary evidence was adduced on behalf of the respondents.

After analyzing the evidence available on record, the trial court allowed the claim petition in part by awarding Rs.3,75,000/- with interest at 9% p.a. from the date of filing

of the petition till the date of realization with proportionate costs against the respondents 1 and 2. Challenging the same, the present appeals came to be filed.

On 02.02.2006 in M.A.C.M.A.M.P.No.439 of 2006 this Court while issuing notice, granted interim stay of payment of compensation subject to the condition of respondents depositing half of the amount of compensation and costs if any awarded by the Tribunal within a period of six weeks from that day. On such deposit, the claimants are permitted to withdraw the same without furnishing security.

The main ground urged by the learned counsel for the claimant is that the finding of the Tribunal in fixing the income of the claimant at Rs.1,500/- per month is very low. According to him, the petitioner being Mason would have been earning not less than Rs.250/- per day. He further submits that the claimant who was married and aged about 28 years is bed-ridden and that the Medical Board which examined the claimant on 30.08.2003, for issuing disability certificate, found that Post-Traumatic quadriplegia with disability of 80%. It is stated that due to closed head injury with contusion cervical spine, quadriplegia developed. The material on record further discloses that both the upper and lower limbs of the claimant became weak and he is not in a position to move without any support. He further submits that as per Ex.A-4-Expert Opinion issued by one Dr.Ekantham Asst. Neuro Surgeon, M.G.M. Hospital, the patient received multiple facial bone fractures with

contusion of cervical spin with quadriparesis. He also placed reliance on Ex.A-8-the discharge summary, wherein the claimant was advised to take bed rest for nearly six months. Since the claimant was permanently disabled, the learned counsel for the claimant submits that the quantum of compensation awarded is meager and same needs to be enhanced.

Per contra, the learned standing counsel for the insurance company strenuously contends that the award was obtained by fraud and as such the same gets vitiated. He submits that in the year 2004 the Insurance Company, on coming to know about the fraud, appointed a private agency to investigate into crime No.120 of 2002 of Matwada Police Station, registered against the Driver of the Auto. Sri D.Rama Koteswara Rao, C.I. of Police (Retired), who investigated into the matter, gave a detailed report stating that the claimant did not sustain injuries in a road accident. According to him, the claimant along with his brother-in-law Shankar, Md. Yakub, M.Mallaiah (owner of the Auto) created this incident in order to get compensation from the insurance company. In support of his report, he placed reliance on the statements of co-masons who were working along with the claimant and also the Out Patient chit issued by MGM Hospital, Warangal (Government Hospital).

P.W.1 in his evidence explained in detail the manner in which the accident took place. According to him, the

accident took place due to rash and negligent act of the Driver of the Auto. Except a suggestion that the accident did not take place in the manner explained, no contra evidence was adduced to disprove the same. In support of his case, the claimant got marked Ex.A-1-certified copy of First Information Report, Ex.A-5-certified copy of the charge-sheet and also certified copy of judgment in C.C. No.481 of 2002 as Ex.A-6. From a reading of the said material on record the inevitable conclusion which can be drawn is that the accident took place due to rash and negligent driving of the driver of the Auto. Though the police have investigated into the matter and filed charge-sheet against the Driver of the Auto and that the Driver of the Auto pleaded guilty at the time of trial, but the events which happened after the date of judgment of the trial court assume lot of significance. It is to be noted that the accused pleaded guilty before the Court on 16.11.2002. Since the insurance company authorities gathered information about the genuineness of the claim, they got the matter investigated through a retired C.I. of Police. The same took place in the year 2004. As referred to earlier the private investigating agency of the Insurance Company examined the Co-Masons and also collected certain documents from the Hospital, which according to them, establish that the claim was made by the petitioner in collusion with the Driver and owner of the Auto. Apart from that the Out Patient chit which was issued at the earliest

point of time shows that the claimant sustained injuries “due to fallen from the slab while he is working at 10.50 a.m., on 22.05.2002 at Warangal”. In a situation like this, the issue is; “Whether the finding of the Tribunal basing on the evidence available thereon warrants any interference?”

In **United India Insurance Co. Ltd., v. Rajendra Singh and others**^[1], the Apex Court while dealing with an identical issue held as under :

“14. It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.”

It is not in dispute that if any fraud is detected the same can be questioned or challenged in any Court at any time and even in collateral proceedings. In **S.P.Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead)**^[2], the two judges Bench of this Court held as under:

“Fraud avoids all judicial acts, ecclesiastical or temporal, observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is nullity and *non est* in the eyes of law. Such a judgment/decree by the first Court or by the highest Court has to be treated as a nullity by

every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.....”

Similarly in A.V.Papayya Sastry and others v. Govt. of A.P. and others^[3], the Apex Court held as follows :

“22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and *non est* in the eye of the law. Such a judgment, decree or order - by the first court or by the final court - has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.”

Though the learned counsel for the claimant relied upon a judgment of the Apex Court in National Insurance Co. Ltd., Chandigarh v. Nicolletta Rohtagi and others^[4], that the insurer is always at liberty to challenge the award by making a fresh application before the Tribunal for rectification of the Award and that the same does not vitiate the order under challenge, I am unable to accept the same. The circumstances under which the said observation came to be passed are totally different. It was a case where the Apex Court was dealing with the situation as to whether an insurer can prefer an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle even if no appeal is preferred under Section 173 of the 1988 Act by the insured. The case on hand stands on a different footing. In fact a reading of the judgments referred to above would show that fraud vitiates the entire proceedings. Therefore, the argument of the learned counsel for the

respondent that in view of the subsequent events and there being a cogent material in the form of a O.P., chit issued by the MGM Hospital at Warangal showing the circumstances under which the claimant sustained injuries, definitely requires some consideration. It is true that this document and the report of the private investigating agency were not available to the police and even the criminal court never had an opportunity of considering documents, since the accused pleaded guilty at the inception.

Further, a perusal of the material placed before this Court would show that the accident occurred on 22.05.2002 and the report came to be lodged 9 days after the incident by one Konkati Sankar, who is a Mason and a relative of the injured. As per the First Information Report, one Yakub who was there at the time of the accident is alleged to have shifted the injured to MGM Hospital, but the medical certificate which has been placed by the Insurance Company in this appeal shows that the injured was brought to the Hospital by one Sadanandam. The private investigating agency, who conducted investigation, pursuant to a request made by the Insurance Company noticed that four masons who worked along with the injured had the name of Sadanandam. When examined by the Agency, all of them denied regarding the accident. Normally, this Court would not have remand the matter back basing on the report of private investigating agency. But in view of O.P. chit issued by MGM Hospital, wherein

the name of one Sadanandam is mentioned as the person who accompanied the injured to the Hospital and who has now denied the very incident itself, this Court is of the view that the same warrants interference.

In the circumstances stated above, it would be appropriate to remand the matter back to the trial court enabling the Insurance Company to adduce evidence which is produced before this Court. It is needless to mention that the Tribunal shall give an opportunity to the claimants to oppose the same and to lead any contra evidence if necessary. Any observations made in this order shall not in any way influence the Tribunal in deciding the matter afresh. Further, the Insurance Company shall not take any steps to recover the amount deposited and withdrawn by the claimant pursuant to the interim order passed by this Court.

For the aforesaid reasons, the order passed by the Tribunal in O.P. No.1493 of 2002 is hereby set-aside and the matter is remanded back to the Tribunal with a direction to dispose of the same afresh in accordance with law within three months from the date of receipt of the copy of this Order.

With the above direction, both the M.A.C.M.As., are disposed of.

There shall be no order as to costs.

The miscellaneous petitions, if any pending, shall

stand closed.

C. PRAVEEN KUMAR, J

Dt: 21.08.2015.

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[\[1\]](#) 2001(1) An.W.R.119 (SC)(CCC)
[\[2\]](#) (1994) 1 SCC 1
[\[3\]](#) (2007) 4 SCC 221
[\[4\]](#) (2002) 7 SCC 456