

## THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.460 of 2009

### JUDGMENT:

This appeal is filed under Section 173 of Motor Vehicles Act by the claimant assailing the judgment and award dated 20.1.2003 passed in O.P.No.51 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad.

2. For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3. The facts leading to filing of the present petition, briefly, are as follows: On 11.7.1999, the petitioner and his family members were proceeding to Bhadrachalam from Hyderabad in Maruthi car bearing No.AP 9Q 4244. When they reached near Manikyamma Gudem in Nalgonda District, the driver of the lorry bearing No.AEK 855 had driven the same in a rash and negligent manner and dashed against the car. The accident occurred due to rash and negligent driving of the driver of the lorry against whom the Station House Officer, Kattangur Police Station registered a case in Crime No.104 of 1999 under Section 337, 338 and 304A IPC. Due to the accident, the petitioner sustained fracture of cheek bone, nose bones, lower jaw and upper jaw. The petitioner took treatment as inpatient in different hospitals for long time and spent huge amount towards medicines and treatment. The lorry bearing No.AEK 855, which belongs to the first respondent, was insured with the second respondent as on the date of the accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioner with interest and costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying all the material averments made in the petition, *inter alia*, contending that the first respondent did not inform the factum of accident to this respondent in collusion with the petitioner. There is no obligation on the part of this respondent to indemnify the liability of the first respondent unless the petitioner establishes that the driver of the crime vehicle 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 excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident took place due to rash and negligent driving of the lorry bearing No. AEK 855 by its driver?
- ii. What is the just amount that can be awarded to the petitioner and against whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A10 were marked. On behalf of the second respondent, no oral evidence was let in, but the copy of the insurance policy was marked as Ex.B.1.

8. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AEK 855 which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.55,000/- directing the respondent Nos.1 and 2 to pay the same jointly and severally with interest at 9% p.a from the date of filing of the petition till the date of deposit. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimant preferred the present appeal.

9. Heard Sri P.Gangarami Reddy, the learned counsel for the claimant and Sri P.Harinath Gupta, learned standing counsel for the second respondent.

10. The contention of the learned counsel for the claimant is three fold:

- i. The Tribunal disbelieved the oral testimony of P.W.2 (Doctor) and discarded Ex.A7 disability certificate on flimsy grounds;*
- ii. The Tribunal rejected the medical bills filed by the petitioner on untenable grounds; and*
- iii. The amount of compensation awarded by the Tribunal is on lower side.*

11. *Per contra*, the learned standing counsel for the insurance company submitted that the finding of the Tribunal that P.W.2 is not a competent person to issue disability certificate is based on sound principles of law. He further submitted that the Tribunal awarded just and reasonable compensation and therefore, the present

appeal is not maintainable.

12. Basing on the rival contentions the only point that falls for consideration in this appeal is:

*Whether amount of compensation awarded by the Tribunal is just and reasonable or not?*

**Point:**

13. The finding of the Tribunal, on issue No.1, that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in injuries to the petitioner, became final, in view of non-filing of appeal or cross-objections by the respondents challenging the said finding.

14. Pending the appeal, this court dismissed the appeal against the first respondent on 05.12.2008 for non payment of batta. Now the crucial question that arises for consideration is whether this court can proceed against the insurer in view of dismissal of appeal against the owner of the offending vehicle. On this aspect, learned counsel for the petitioner has brought to my attention the decision in **Meka Chakra Rao v Yelubandi Babu Rao @ Reddemma**. In the said decision, question No.1 is as follows:

What is the effect of the non-presence of the owner of a motor vehicle (insured) at the appellate stage, if the appeal against the owner is dismissed for default for non-payment of 'batta' or for non-compliance with the orders of the Court?

Deciding the question in the affirmative, in Para 9 it was held as follows:

9. If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore **there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the insurance**. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage.

15. The facts of the case on hand are akin to the facts of the case cited by the learned counsel for the petitioner. Having regard to the facts and circumstances of the case and the principle enunciated in the case cited supra, this court is of

considered view that in the appeal filed by the claimants the absence of owner of crime vehicle is not a bar to decide statutory liability on the part of the insurance company under the contract of insurance. Therefore, this matter can be proceeded, even though the appeal against the first respondent is dismissed for non-payment of batta, to decide the liability of the second respondent—insurance company.

16. As per the testimony of P.W.1, due to the accident, he sustained fractures on the face. A perusal of Ex.A5 reveals that the petitioner sustained 1) Bil comminuted fractures of maxille (left III), 2) Comminuted fracture of Nasoethmoid complex and medial orbital wall, 3) Dentoalveolar fracture involving lower 4, and 4) Dentoalveolar fracture last two molars (R). The petitioner undergone open reduction surgery and plate and screw fixation at frontozygomatic junction both sides was done. A perusal of the testimony of P.W.2 clearly reveals that the petitioner sustained fracture of nasal bones. Taking into consideration the fracture sustained by the petitioner, I am inclined to award Rs.35,000/- towards pain and suffering instead of Rs.25,000/- as awarded by the Tribunal. In case of fractures, the Doctors may advise the patient to take special diet for uniting of fractures. Taking into consideration the nature of fractures sustained by the petitioner, this court is inclined to award Rs.4000/- towards extra nourishment and incidental expenses.

17. One of the contentions raised by learned counsel for the petitioner is that the Tribunal discarded medical bills without assigning proper reasons. A perusal of the record reveals that the Tribunal considered all the medical bills issued by Yashoda Hospital and Geeta Hospital. The Tribunal discarded some of the bills, which are not supported by prescriptions. The Tribunal, after scrutinizing all the medical bills produced by the petitioner, rightly awarded an amount of Rs.30,000/- towards medical bills and treatment. Therefore, the contention of learned counsel for the petitioner that the Tribunal discarded the medical bills, without assigning proper reasons, is not sustainable on facts.

18. The next contention raised by the learned counsel for the petitioner is that the Tribunal discarded the disability certificate, which is not permissible under law. To substantiate the argument, he has drawn my attention to the decision in **New India Assurance Co. Ltd., v Commissioner for Workmen's Compensation and Assistant Commissioner for Labour, Nizamabad**. Relevant portion in para 19 is extracted hereunder:

Under Schedule-I, a legal fiction is created by the Legislature wherein injuries referred to in the said Schedule are deemed to result in permanent disablement vis-à-vis the percentage of loss of earning capacity. Thus, the statute itself simplified the process of calculation of loss of earning capacity with reference to the scheduled injuries. While, in case of non-scheduled injuries resulting in permanent partial or total disablement, the assessment by qualified Medical Practitioner is necessary as required under Section 4(C) (ii) of the Workmen's Compensation Act. The words "Qualified Medical Practitioner" is also defined under Section 2(1)(i) which means "any person registered under any Central Act, Provincial Act or any Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purpose of this Act."

As per the principle enunciated in the case cited supra, under Section 2(i) of the Workmen's Compensation Act, a Qualified / Recognized Medical Practitioner is competent to issue disability certificate. There is no similar provision under the Motor Vehicles Act. The facts of the case on hand are distinguishable to the facts of the case cited supra.

19. Learned counsel for both the parties have cited the decision in **Raj Kumar v Ajay Kumar** wherein the Hon'ble apex court laid guidelines with regard to appraisal of disability certificates produced by the claimants. Para 18 of the said decision reads as under:

18. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give "ready to use" disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local hospitals/medical colleges) and refer the claimant to such Medical Board for assessment of the disability.

Let me consider the facts of the case on hand in the light of the above guidelines. As

per the testimony of P.W.2 (Doctor), he examined the petitioner and issued Ex.A7 disability certificate. It is not in dispute that the petitioner did not take treatment under the supervision of P.W.2. As per the testimony of P.W.2, he treated the petitioner as outpatient. P.W.2 assessed the disability of the petitioner at 35% basing on various fractures sustained by him. In para-9 of the judgment, the Tribunal categorically observed that P.W.2 used to issue disability certificates to the victims of motor accidents even though they did not take treatment under his supervision. It seems that the Tribunal doubted the genuineness of the disability certificate (Ex.A7) issued by P.W.2. It is not uncommon to issue disability certificates with exaggerated percentage thereby to facilitate the claimants to claim more compensation from the Tribunals. Apart from that P.W.2 is not a dentist or ENT specialist to issue disability certificate in this case in respect of the injuries sustained by the petitioner. Even as per the decision cited supra, the Doctor who treated the patient is entitled to issue disability certificate. Having regard to the facts and circumstances of the case and also the guidelines cited above, I am fully agreeing with the finding of the Tribunal with regard to the manner in which P.W.2 issued Ex.A7 disability certificate in favour of the petitioner.

20. However, the fact remains that due to the fractures sustained by the petitioner, he may not enjoy his life as he enjoyed prior to the accident and he must face difficulty in chewing. Taking into consideration the facts and circumstances of the case, this court is inclined to award Rs.30,000/- towards loss of future amenities. Thus, the total compensation for which the petitioner entitled to, under the following heads, is as follows:

Rs.

- 1. Pain and suffering : 35,000
- 2. Extra nourishment : 4,000
- 3. Medicines and treatment : 30,000
- 4. Loss of future amenities : 30,000

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Total : 99,000

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The compensation of Rs.99,000/- awarded to the petitioner is fair, just and reasonable. Accordingly, the point is answered.

21. In the result, the appeal is allowed partly, enhancing the quantum of compensation from Rs.55,000/- to Rs.99,000/-. The petitioner is entitled to interest at 9% per annum on Rs.55,000/- and at 7.5% per annum on the enhanced compensation of Rs.44,000/- from the date of petition till deposit. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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**T.SUNIL CHOWDARY, J.**

Date: 23<sup>rd</sup> April, 2015.

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