THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.162 of 2009

JUDGMENT:

Aggrieved by the Award dated 25.08.2007 in O.P.No.2016 of 2000 passed by the Chairman, MACT-cum-Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal"), the 2nd respondent in the O.P/National 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 10.06.2000 when he was travelling in Tata van bearing No.AP 22T 7381 towards Prajyapur, the driver of the van drove the same in a rash and negligent manner and at high speed and dashed a vehicle going in front of it and thereby he sustained multiple injuries. Immediately he was admitted in Gandhi Hospital and later shifted to CDR Hospital for better treatment and he undertook treatment as inpatient in the said hospital from 11.06.2000 to 30.07.2000. It is averred that the accident was occurred due to the fault of driver of the van. On these pleas, the claimant filed O.P.No.2016 of 2000 under Section 166 of Motor Vehicles Act (for short "MV Act") and claimed Rs.5,00,000/- as compensation against respondents 1 and 2 who are owner and insurer of the offending van.

b) Respondent No.1 remained ex-parte.

c) Respondent No.2/National Insurance Company contended that there is no negligence on the part of van driver. R2 further contended that unless it is proved by the claimant that driver has valid and effective driving licence at the time of accident, he is not entitled for any compensation. Finally, R2 contended that compensation is highly excessive and exorbitant.

d) During trial, PW1 was examined and Exs.A1 to A9 were marked on behalf of claimant. Exs.B1—policy copy was marked on behalf of respondents. The then Presiding Officer granted compensation of Rs.91,000/-. Aggrieved by the same, respondent No2/Insurance Company filed CMA No.338 of 2005 and claimant preferred CMA No.3713 of 2002 and by common judgment dated 07.02.2007 both the appeals were disposed by the High Court with a direction to the Tribunal to consider the case afresh. Thereupon the claimant examined PWs.2 to 4.

e) The lower Tribunal considering the oral and documentary evidence held that driver of the offending van was responsible for the accident. Compensation is concerned, the Tribunal awarded Rs.4,55,000/- with proportionate costs and interest at 6% p.a. under different heads as follows:

Pain and suffering	Rs.	55,000-00
Extra-nourishment	Rs.	3,000-00
Medical expenses	Rs.	1,40,000-00
Transport and extra-nourishment	Rs.	2,000-00

Partial permanent disability	Rs.	2,55,000-00
Total:	Rs.	4,55,000-00

Hence, the appeal by National Insurance Company Limited.

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

4) Heard arguments of Sri Ravishankar Jandhyala, learned counsel for appellant/Insurance Company, Sri Ramchandar Rao, learned counsel for R1/claimant. Though notice to R2/owner served, there is no representation on his behalf. Hence, treated as heard.

5a) Learned counsel for appellant/Insurance Company fulminated the award on two main grounds. Firstly, criticizing fastening of liability on Insurance Company he argued that the claimant travelled in the van as an unauthorised passenger, as except driver none other should travel in the crime van and for the breach of policy the Tribunal ought to have exonerated the Insurance Company.

b) Secondly, criticizing quantum of compensation, learned counsel argued that PW2 who issued Ex.A8—disability certificate has not treated the claimant and therefore he is not competent to issue the certificate and the Tribunal ought not to have relied upon the same. He contended that though Ex.A6—discharge bill shows an amount of Rs.1,35,920/-, the

Tribunal awarded a high amount of Rs.1,40,000/-. He further argued that Tribunal took a high amount of Rs.2,500/- as monthly earnings of the claimant and a high multiplier of '17' instead of '16'. So also, the Tribunal awarded an exorbitant amount of Rs.55,000/- towards pain and suffering for three fractures. He thus prayed to allow the appeal.

6) Per contra, learned counsel for respondent No.1/claimant while supporting the award argued that compensation awarded under different heads is just and reasonable and there is no need to revise the same. He further argued that claimant is not an unauthorised passenger but he went as coolie to unload the poultry chicken and while returning the vehicle met with accident. Therefore, the claimant cannot be treated as unauthorised passenger. He relied upon a decision of this Court reported in ***P.Venkata Ramana v. Chintaguntla Kumari and others***[1]. He thus prayed to dismiss the appeal.

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

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

8a) **POINT**: The first argument of appellant is that the policy will not cover the risk of deceased as he travelled in the vehicle as unauthorised passenger and in fact except the driver none other should travel in the crime van and hence for violation of terms of policy the Insurance Company is not liable. This argument cannot be accepted. As per claimant, he was the labourer who went in the crime van to Karimnagar and unloaded the chicks and while in the return journey the accident was occurred. He denied the suggestion that he was unauthorised passenger in the van. Thus he claims to be the labourer engaged in the van and not a mere passenger. Be that it may, within short time after the accident, the VAO of Rimmanaguda lodged Ex.A1—FIR wherein he referred the claimant and another person as labourers travelling in the crime van. Therefore, it can be accepted that claimant was travelling as a labourer but not as a passenger. Then perusal of Ex.B1—policy shows that the insured paid extra premium of Rs.45/- to give coverage to the employees. Therefore, the risk of petitioner is well covered under Ex.B1. In the cited decision in ***P.Venkata Ramana***'s case (1 supra) this Court has held that the coolie while returning in the goods vehicle after unloading goods will not become gratuitous passenger and his risk will be covered under the terms of policy. So, in view of the said decision also the petitioner cannot be termed as gratuitous passenger merely because he was returning after unloading chicks at Karimnagar.

b) The next argument of the appellant is that PW2 has not treated the claimant and therefore, there is no sanctity for Ex.A8—disability certificate issued by him. This argument is also untenable. A perusal of evidence of PW2 would show that he has not treated the claimant but he stated that when the claimant approached him on 11.02.2002, on clinical and radiological examination he issued Ex.A8—disability certificate. PW2 clearly stated that he is an orthopaedic surgeon and competent to assess disability. He deposed that he issued Ex.A8 by following MAC BRIDE'S SCALE.

c) In ***Raj Kumar vs. Ajay Kumar and another***[2] the Apex Court observed that any competent doctor can issue disability certificate but he shall be examined in a court of law to enable the other side to cross-examine him. Hence the evidence of doctor stands on the footing of expert which the Court may ultimately accept or reject for valid reasons. However, doctor's evidence cannot be rejected merely on the sole ground that he was not the treatment doctor. In the instant case, PW2 claimed himself as orthopedic surgeon and his competency is not challenged. Further, he claimed that on clinical and radiological examination only he issued disability certificate. This fact was also not disputed. Therefore, the Tribunal was right in accepting the evidence of PW2 which would show that claimant suffered 50% disability.

d) The next contention put forth by the appellant/Insurance Company is that the Tribunal erred in awarding Rs.55,000/- for pain and suffering. I find this argument as preposterous. As per Ex.A5, claimant suffered fracture of mid shaft of left femur, fracture of right public bone and comminuted fracture lower shaft of left humerus. He also suffered fracture right frontal bone and fracture of mid shaft of left radius. However, the Tribunal took three fractures into consideration and awarded Rs.54,000/- @ Rs.18,000/- per fracture and added Rs.1,000/- more to the rest of the injuries. At any rate, having regard to the gravity of the injuries, the said amount cannot be said as excessive or exorbitant.

e) The next argument is that the Tribunal erred in taking monthly income of the claimant as Rs.2,500/-. The Tribunal following the minimum wages of unskilled labour fixed his monthly income at Rs.2,500/- and the same is reasonable one.

f) The other argument of the appellant that the Tribunal erred in accepting 17 as multiplier also cannot be countenanced.

g) Then, the final argument of the appellant is that though Ex.A6—medical bills was issued for Rs.1,35,920/- the Tribunal rounded the said figure to Rs.1,40,000/- which is on high side. I accept this contention. The medical expenditure should have been Rs.1,36,000/-.

Therefore, at the outset, the compensation is liable to be reduced by Rs.**4,000**/-

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

a) The compensation is reduced by Rs.**4,000**/- with proportionate costs and interest at the rate of 6% per annum from the date of OP till the date of realisation.

b) The respondents in the OP shall 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

Date: 14.10.2015
Murthy

---

[1] 2010 (2) ALD 281
[2] (2011) 1 SCC 343