

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-

-

C.M.A.No.2340 of 2004

-

-

JUDGMENT:

This appeal under Section 173 of the Motor Vehicles Act by the injured/claimant is directed against the Award dated 28.11.2002 of the learned Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Nizamabad passed in M.V.O.P.No.986 of 1999.

2. I have heard the submissions of the learned counsel for the appellant/claimant ('the claimant', for brevity) and the learned counsel for the second respondent/insurance company ('the second respondent' for brevity). This appeal against the 1st respondent/owner-cum-insured was dismissed for default. Even though this appeal is dismissed against the owner-cum-insured of the vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company in view of a judgment of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others.**

3. The case of the claimant and the facts leading to the filing of the instant appeal may be stated, in brief, as follows: - 'On 13.05.1999 at about 5 PM, when the claimant was waiting for a bus at Nekli bus stop with a view to go to Nachupally village, which is situated at a distance of 10 KMs from Birkur Police Station, a jeep bearing registration No. AIF 2964 being driven by its driver at a high speed and in a

rash and negligent manner dashed against the claimant. In the said accident, the claimant had sustained fracture injuries to her skull bone besides multiple and grievous injuries on the other parts of her body. Therefore, she had filed the claim petition claiming a compensation of Rs.1,00,000/-. The owner-cum-insured (1st respondent) had remained *ex parte* before the Tribunal. The 2nd respondent-insurance company had resisted the claim by raising various contentions in its written statement. During the course of trial before the Tribunal, the claimant and a doctor were examined as PWs1 and 2. Exhibits A1 to A5 were marked on the side of the claimant. On behalf of the 2nd respondent, no oral evidence was adduced. But, exhibit B1-the copy of insurance policy was marked. The Tribunal while holding that the pleaded accident resulting in injuries to the claimant had occurred on account of the rash and negligent driving of the jeep bearing registration no. AIF 2964 by its driver had awarded a compensation of Rs.40,000/- with interest at 9% per annum simple from the date of petition till the date of realisation along with proportionate costs recoverable by the claimant from both the insured and the insurance company. The Tribunal had directed the insured and the insurance company to deposit the said compensation with interest and costs within sixty days from the date of the award. The claimant, not having been satisfied with the award, had filed this appeal for determination of just and fair compensation. It is stated that no appeal or cross objections are filed by the insurance company.'

4. (a) The learned counsel for the claimant would contend as follows: - 'A meagre compensation was awarded to the claimant, who had sustained grievous injuries and also permanent partial disability. The Tribunal ought to have awarded compensation as claimed. The petitioner having sustained fracture of skull bone and multiple and grievous injuries all over the body had taken treatment from Dr. L.Ramulu, an Orthopaedic Surgeon and had spent Rs.40,000/- on medicines and extra nourishment. On account of the disability suffered on account of the injuries sustained in the accident, she is unable to attend to her regular business. Though, there is adequate evidence in regard to the disability and loss of income and loss of amenities of life etcetera, the Tribunal had awarded a paltry sum of Rs.40,000/- without properly appreciating the evidence of the claimant and the doctor, who had stated in his evidence that the claimant had sustained 25% permanent partial disability besides post traumatic stiffness of right arm and that the movements of the right arm and right shoulder are painful and restricted. The Tribunal had failed to

follow the settled legal position and had failed to award compensation under all the relevant heads. Therefore, the appeal may be allowed and just and reasonable compensation may be awarded.'

4. (b) On the other hand, the learned counsel for the 2nd respondent would contend as follows: 'The Tribunal had awarded a compensation of Rs.40,000/-. The claimant was aged 26 years according to her version. She was a house wife. She did not produce any evidence that she is a labourer and a beedi roller and used to earn Rs.4,000/- per month. The doctor, who was examined as PW2 is not a credible witness and he was in the habit of issuing medical certificates and giving evidence by exaggerating the facts just to support the claimants in various cases; and, he is a stock witness for the claimants in the District of Nizamabad and the neighbouring districts; and therefore, his evidence cannot be looked into as he is not a reliable witness. The medical bills and prescriptions were not filed. In the absence of any documentary evidence and credible evidence as regards the occupation, income and permanent disability, if any, suffered by the claimant, the Tribunal had rightly determined the compensation based on the available evidence after having properly appreciated the evidence. The compensation awarded cannot be said to be not reasonable, just and fair. The claimant is not entitled to any enhanced compensation. The appeal is devoid of merit and is liable to be dismissed.'

5. The points that arise for determination in this appeal are:

Whether the compensation awarded by the Tribunal is not just, reasonable and fair in the facts and circumstances urged by the claimant? And, if so, what shall be the just, reasonable and fair compensation to be awarded to the claimant in this appeal?

6. POINTS:

6. (a) In regard to the injuries and other allied aspects, the case of the claimant is this: 'She had sustained fracture of skull bone, multiple and grievous injuries on the head besides grievous injuries on various parts of the body. Immediately, she was taken to Government Hospital, Banswada. She was treated as an inpatient. After discharge, she had received treatment from a private doctor. She had incurred an

expenditure of more than Rs.40,000/- as on the date of the filing of the claim petition. She was of 26 years of age and was hale and healthy at the time of the accident. She used to work as a beedi roller and a labourer and used to earn Rs.4,000/- per month. On account of the injuries sustained by her in the accident, she is experiencing giddiness and headache and the said injuries had resulted in permanent disability. She is not able to do any work. She lost her earnings and earning capacity. She had suffered pain and mental agony and had lost hope on her future. She is not able to maintain herself and her family members.' On the other hand, the case of the 2nd respondent is in the nature of general denial and the 2nd respondent had put the claimant to strict proof of her pleaded case in this regard and her entitlement to the compensation as claimed.

6. (b) PW1 while deposing in line with her pleaded case, had further affirmed in her evidence as follows: 'So far I had spent an amount of Rs.60,000/- towards medicines and extra nourishment. Still I am taking treatment.' In her evidence, her injury certificate is exhibited as exhibit A3. When it was suggested to her that she had sustained simple injuries, she had denied the said suggestion, but had admitted that she did not file any documentary evidence to show that she had incurred an expenditure of Rs.60,000/-; but, she had added that she did not preserve medical bills. When it was further suggested that after the treatment in the Government Hospital, Banswada, as outpatient, she became alright and that she did not suffer any disability and that she is capable of doing all her duties as in the past, she had denied the said suggestions. She had admitted that she did not file any record to show that she was earning Rs.6,000/- per month by working as beedi roller and labourer. She had also examined PW2, a doctor. The doctor had deposed that he had verified previous records of PW1 and that he had issued exhibit A5-disability certificate certifying the disability at 25%, which is permanent and partial in nature. According to the doctor, PW1 is having post traumatic stiffness of right arm, which is painful, besides restricted movements of her shoulder. In his cross-examination, the following points were elicited. 'The petitioner was treated as outpatient in Government Hospital, Banswada for laceration over the right side of the head and the bruise over the right arm. The said two injuries are simple in nature. After treatment in Government Hospital, the petitioner might have become alright.' When it was further suggested to him that PW1 had become perfectly alright and had not

suffered any disability as stated by her and that he had issued exhibit A5 disability certificate without any basis and only to help PW1 to get more compensation, he had denied the said suggestions. Admittedly, this doctor had not treated PW1.

6. (c) I have carefully gone through the evidence. Though PW1 had deposed that she had sustained fracture of skull bone, the doctor in his evidence did not support the said statement of PW1. On the other hand, the doctor had stated that PW1 is having post traumatic stiffness of right arm and restricted movements of shoulder. However, a perusal of exhibit A3-wound certificate would show that PW1 had sustained a laceration on the right side of head and a bruise on the right upper arm and that both the said injuries were certified as simple in nature. Admittedly, PW2 did not treat her. Therefore, it is difficult to believe that a simple bruise which was caused to her in the accident had resulted in 25% permanent disability, more particularly, when there was no fracture of right upper arm or shoulder and the said injury was certified as simple injury. Taking into consideration the evidence brought on record, the Tribunal had awarded, in all, Rs.40,000/-. In the facts and circumstances of the case, this Court finds that there is no reason to hold that the compensation awarded by the Tribunal is not just, reasonable and fair. On the other hand, on an analytical examination of the evidence and considering the fact that PW1 had sustained only two injuries, which are mentioned supra, this Court is satisfied that the compensation awarded is just, reasonable and fair and needs no upward revision. The point is accordingly answered.

7. In the result, the appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

30th March, 2015

RAR

