HON'BLE SRI JUSTICE S. RAVI KUMAR

M.A.C.M.A No.2796 of 2015

JUDGMENT:

This appeal is preferred questioning order dated 31.12.2008 in M.O.P.No.651 of 1997 on the file of Chairman, MACT-cum-Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

2. First respondent herein filed the above referred O.P alleging that on 05.10.1996, he along with his fellow driver went to Brooke Bond Factory premises at Ghatkesar in a lorry bearing No.AP 16U 3556, for unloading the load, and after unloading the load at the factory premises, the fellow driver of the vehicle drove the same at high speed and in a rash and negligent manner and dashed against the compound wall, as a result, he sustained grievous injuries. He claimed a sum of Rs.5,60,000/- under different heads as compensation for injuries sustained by him. Appellant herein resisted the claim of first respondent herein contending that claimant has to strictly prove that he sustained injuries due to the rash and negligent driving of the driver of the vehicle insured and that driver has got valid and effective driving licence as on the date of accident. It is further contended that the claim of Rs.5,60,000/- is imaginary, exorbitant and excessive and that claimant is not entitled for the same. On these contentions trial court conducted enquiry, during which, four witnesses are examined and 9 documents are marked on behalf of claimant, whereas, no witnesses are examined and only insurance policy is marked as Ex.B1 on behalf of insurance company. On a over all consideration of oral and documentary evidence, Motor Accidents

Claims Tribunal (for short "lower tribunal") granted Rs.5,52,000/- as compensation under different heads. Questioning the same, insurance company preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant submitted that the lower tribunal has taken the disability at 50% for injuries sustained by claimant without any disability certificate and without any documentary proof for the disability and the findings of the lower tribunal on this aspect are untenable and erroneous. He further submitted that lower tribunal has granted Rs.2,30,000/- towards extra nourishment and medical expenses by accepting the duplicate bills produced on behalf of claimant. He further submitted that the person concerned with the bills i.e., person from finance department is not examined and evidence of PW.3 is no way helpful to the claimant to prove the bills marked as Ex.A8, but the lower tribunal has accepted the duplicate bills without any valid reasons, and for these two reasons, the order of the lower tribunal has to be set aside and the appeal has to be allowed.

5. On the other hand advocate for claimant submitted at the time of marking these bills, insurance company has not raised any objection and PW.3 is the accountant in the hospital, who has identified these bills and also deposed as to how they would issue duplicate bills. He further submitted that claim under Ex.A9 medical bills is quite reasonable, in view of the fact that the claimant was admitted 5 times in the hospital for operation, and as per the evidence of medical officer, injured still has to undergo 2 more operations and that the lower tribunal has rightly accepted those bills. He further submitted that PW.2 Medical Officer, who treated the injured, deposed in his evidence that the claimant was

suffering from 75% disability on account of injuries and even after two surgeries that are to be performed, the claimant will have still 50% of disability, which is permanent in nature and injured cannot perform his day today normal activities. He submitted that the evidence of medical officer is not rebutted, as the insurance company has not examined anyone and simply because there was no disability certificate, the evidence of PW.2 cannot be discarded. He further submitted that the claimant is still holding lump and on account of this, he was not in a position to appear before medical board even for obtaining necessary disability certificate, therefore objection of insurance company is not tenable.

6. Now the point that would arise for my consideration is:

Whether the order of lower tribunal is legal, proper and correct?

POINT:

7. There is no dispute with regard to the accident that took place on 05.10.1996, in which, first respondent herein sustained injuries. Admittedly, no witnesses are examined on behalf of insurance company and except marking the insurance policy as Ex.B1 and they have not produced any evidence rebutting the evidence of PWs.1 to 4, who are examined on behalf of claimant. PW.1 is the claimant himself, PW.2 is the medical officer, who treated the injured, PW.3 is Assistant Accountant in Kamineni Hospital and PW.4 is the employee in Brooke Bond Factory, where the injured was working. Medical officer clearly deposed in his evidence that claimant was admitted in their hospital on 5.10.1996 as diagnosis of post traumatic perineal wound with fracture of pelvis etc., He deposed that claimant was properly investigated

and he was treated in their hospital and that claimant underwent surgeries and was inpatient in their hospital for 5 times. As seen from the evidence of PW.2, the claimant was inpatient from 05.10.1996 on first occasion, from 10.03.1997 on second occasion, from 19.05.1997 on third occasion, from 20.07.2001 on fourth occasion, and from 28.09.2001 on fifth occasion for treatment of anal incontinence surgery. Medical officer also deposed that patient has to undergo two more operations for improving his anal function and closing the colostomy and that expected expenditure for these two surgeries would be Rs.1,50,000/-. He clearly deposed in his evidence that claimant is suffering from 75% disability on account of the injuries and even after two surgeries, claimant is expected to have 50% disability continuously and patient cannot perform his normal day today activities. Except putting suggestions to the medical officer nothing could be elicited from him to discredit his testimony. Though it was suggested to PW.2 that disability would be only around 20%, no material is produced on behalf of insurance company to substantiate the suggestion. The medical officer denied the suggestions put to him and assertively stated that the percentage of disability as on his deposition was 75%. According to Medical Officer, only after performing the two surgeries, the percentage may come down to 50%.

8. As seen from the record, the tribunal has taken only 50% of disability into consideration while calculating the compensation. Therefore, as rightly pointed out by advocate for claimant objection of insurance company with regard to percentage of disability fixed by tribunal is not tenable, simply because the disability certificate is not produced. The evidence of Doctor, who treated the patient and assessed the disability both on physical examination and the

diagnosis report, cannot be discarded, unless there is material to show that his assessment was wrong. For these reasons, the contention of insurance company with regard to percentage of disability cannot be accepted.

9. The next contention of insurance company is that lower tribunal has considered the duplicate bills for huge sum of Rs.2,30,000/- without examining proper person. Advocate for appellant submitted that PW.3 admitted in his evidence that he is not concerned person and the financial department is the concerned department which would look after the billing. But, admittedly PW.3 is an accountant in the very same hospital and these bills are issued by the very same hospital.

10. As rightly pointed out by advocate for claimant no objection is raised on behalf of insurance company at the time of marking these duplicate bills. PW.3 explained in his evidence as to when they would issue duplicate bills and considering the same, the objection of insurance company with regard to Ex.A8 bills, which is supported with Ex.A9 medical record and Ex.A7 prescriptions, cannot be accepted. Further as seen from the material, there is not even suggestion put to PW.3 questioning the genuineness or correctness of these duplicate bills. Therefore, objection of insurance company with regard to medical bills is also not tenable.

11. The lower tribunal has elaborately discussed each and every aspect and appreciated the evidence on record and came to a right conclusion in assessing the disability and fixing the compensation. Lower tribunal has granted compensation under different heads the total of which arrived at Rs.5,52,000/-. Considering the nature of injuries, gravity of injuries and the nature

of treatment, particularly surgeries underwent by claimant and future surgeries, I am of the view that the compensation as fixed by tribunal is quite reasonable and there are no grounds to interfere with the same.

12. For these reasons, this appeal is liable to be dismissed as devoid of merits.

13. Accordingly, this M.A.C.M.A is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 21-03-2016.
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