THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1389 of 2009
and
Cross-Objections (SR) No.42239 of 2009

COMMON JUDGMENT:

Both the Insurance Company and the claimant, have challenged the Award dt.19.08.2006 in OP No.946 of 2002 passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Khammam (for short 'the Tribunal'), the former in the form of instant appeal and the latter by cross-objections.

2) The factual matrix of the case is thus:

a) On 09.04.2002 while the claimant was on her morning walk near Murredu Bridge in front of the house of Dr.Suryam at Kothagudem, an Auto bearing No.AP 20 U 2623 being driven by its driver in a rash and negligent manner at high speed and hit the claimant. Thereby, the claimant suffered injury to her head, backside of the collar bone and fracture to her ribs. Thereafter, the claimant was admitted in the Hospital of Dr.Ch.Krishna Prasad and from there she was shifted to Hyderabad Hospital where she took treatment as inpatient for one month. It is averred that the driver of the auto was responsible for the accident. On these pleas, the claimant filed OP No.946 of 2002 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondents 1 to 3, who are driver, owner and insurer of the offending auto respectively, and claimed Rs.4,00,000/- as compensation.

b) Respondents 1 and 2 filed counter and denied the material averments made in the petition and urged to put the claimant in strict proof of the same. They contended that the accident was occurred due to the negligence of the claimant herself. They submitted that as the crime vehicle was insured with R.3, they are not liable to pay compensation. Finally, they contended that the compensation claimed is excessive and exorbitant and thus prayed to dismiss the O.P.

c) Respondent No.3/Insurance Company filed its counter and opposed the claim petition denying the material allegations and urged to put the claimant in strict proof of the same. It contended that the driver of the auto had no valid driving licence and that the accident was occurred due to the negligence of the claimant herself. Thus R.3 prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimant. RWs.1 and 2 were examined and Exs.B.1 and B.2 were marked on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.2,38,000/- with proportionate costs and interest @ 7.5%

p.a. against respondents 1 to 3 under different heads as follows:

Pain and suffering	Rs. 90,000/-
Medical expenses	Rs.1,30,000/-
Attendant charges	Rs. 5,000/-
Extra nourishment	Rs. 10,000/-
Transport expenses	Rs. 3,000/-
Total	Rs.2,38,000/-

Hence, the appeal by Insurance Company and Cross objections by the claimant.

3) The parties are referred as they stood before the lower Tribunal.

4) Heard arguments of Sri C.Prakash Reddy, learned Counsel for appellant/Insurance Company and Sri A.Surya Narayana, learned counsel for respondent No.1/claimant—Cross objector. R.2 in the appeal i.e., driver of the auto is not necessary party vide cause title. Notice sent to R.3/Owner of the Auto is not yet returned.

5) Learned counsel for appellant/Insurance Company would strenuously argue that the lower Tribunal should not have fastened liability on the Insurance Company for breach of driving licence condition by the 1st respondent as by the date of accident, he had driving licence to drive Light Motor Vehicles but not passenger auto. Thus at the first instance learned counsel sought to exempt the liability of Insurance Company.

a) Nextly, he argued that the compensation awarded under different heads is excessive and hence requires re-consideration.

He thus prayed to allow the appeal and dismiss Cross Objections filed by the claimant for enhancement as there are no merits.

6) Per contra, learned counsel for claimant would argue that the compensation was drastically low as can be observed from the facts that inspite of the claimant suffering multiple fractures to her collar bone, ribs and head, in her old age, the Tribunal awarded a paltry amount of Rs.90,000/- for fracture injuries and pain and suffering. He would further contend that compensation awarded for transportation expenses and medical expenses is also meager. He thus prayed to allow the cross objections and enhance the compensation while dismissing the appeal filed by the Insurance Company.

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

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

8) **POINT**: The accident, involvement of the auto bearing No.AP 20 U 2623 and the claimant suffering injuries are admitted facts. The contention of appellant/Insurance Company that the R.1/driver did not hold valid driving

licence to drive passenger auto as on the date of accident shall fail for the reason that Ex.B.2—driving licence particulars filed by the Insurance Company would clearly show that initially R.1 was issued licence to drive Light Motor Vehicles (non-transport) for the period covering from 06.03.1999 to 05.03.2019. However, subsequently he was issued licence to drive LMV (Transport) w.e.f 27.11.2000 with Badge No.456/2000 upto 26.11.2003. The accident in this case was occurred on 09.04.2002. Therefore, by that date, the driver possessed valid driving licence to drive Light Motor Vehicles of transport category. The crime vehicle in the instant case is a passenger auto and hence it is basically a transport vehicle. The Central Government in its Notification vide S.O. 451(E) dated 19th June, 1992 published in the Gazette of India, Extra Pt.II, Section 3(ii) specified about the Transport and Non-transport vehicles. As per Sl.No.(x) "*three-wheeled vehicles transport of passenger/goods*" are mentioned as Transport Vehicles. Therefore, the passenger auto is a transport vehicle as per the said notification. It was so held by the Apex Court in the decision reported in ***New Indian Assurance Co. Ltd. vs. Roshanben Rahemansha Fakir and another***[1]. Therefore, there is no force in the contention of the appellant/Insurance Company that the driver did not hold valid driving licence to drive passenger auto. Hence the appeal filed by the Insurance Company shall fail.

9) Sofaras the cross-objections filed by the claimant is concerned, having found that the claimant suffered multiple fractures in her old age and compensation of Rs.90,000/- awarded for injuries and pain and suffering being low and inadequate, the same is enhanced to **Rs.1,20,000/-**. Compensation awarded under other heads is found to be just and reasonable. Thus, the total compensation payable to the claimant is as follows:

Pain and suffering	Rs.1,20,000/-
Medical expenses	Rs.1,30,000/-
Attendant charges	Rs. 5,000/-
Extra nourishment	Rs. 10,000/-
Transport expenses	Rs. 3,000/-

Total	Rs.2,68,000/-

So at the outset, the compensation is enhanced by **Rs.30,000**/- (Rs.2,68,000/- minus Rs.2,38,000/-).

10) In the result, the Appeal filed by Insurance Company is dismissed and the Cross Objections filed by the claimant is partly allowed and ordered as follows:

a) The compensation is enhanced from **Rs.2,38,000/-** to **Rs.2,68,000**/- with proportionate costs and interest @ 7.5% p.a. from the date of OP till the date of realisation.

b) The Respondents 1 to 3 in the O.P are directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 09.08.2016
Scs

[1] AIR 2008 SC 2266