

SMT JUSTICE T. RAJANI

MACMA No.154 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the tribunal below, assailing the award of the V Additional District Judge, Warangal in OP.No.815 of 2004 dated 31.08.2007 on the ground that the tribunal, while dismissing the OP, ought to have seen that the injuries sustained by the appellant in the accident are due to the rash and negligent driving of the driver of the tractor and trailer and that the same is not disputed by the respondent. It is urged that the tribunal ought to have seen that the number of the tractor given before the registration was temporary and the insurance policy covers the vehicle and that the chassis number and engine number of the tractor are one and the same in respect of crime vehicle and the tribunal ought to have seen that there was a mistake on the part of the counsel appearing on behalf of the appellant in taking necessary steps, by filing petition for amending the number of the vehicle and for the mistake of the counsel, the claimant could not be put to loss.

2. At the hearing, the counsel appearing for the respondent contended that the appellant needs to make an amendment with regard to the number of the vehicle, by getting the matter remitted to the lower Court. But this Court considers that whatever be the vehicle number mentioned in the petition, award can be made on the vehicle found to be responsible for the accident and so technical an approach is not felt as meeting the object of a beneficial legislation enacted with a social philosophy.

3. A perusal of the record of the tribunal shows that the number of the tractor, which was actually AP 15 TRM 299, was wrongly mentioned as AP 15 TRM 992 in the complaint and the FIR. But in the charge sheet, correct registration number i.e. AP 15 TRM 299 was mentioned. The charge sheet stands on a better footing than the complaint and the FIR, as it is supposed to have been filed after due investigation. Hence, going by the mere mentioning of a mistaken number, the claim under a beneficial legislation should not be defeated. Hence, this Court sets aside the award of the tribunal to the extent of holding that the respondent – insurance company has nothing to do the vehicle involved in the accident.

4. The counsel for the respondent suggests that the matter has to be remitted to the lower Court for decision on other issues. But having regard to the year of accident, which is 2004, this Court feels that it would be in the interest of justice that this Court decides the issues involved in this *lis* instead of remitting it to the lower Court.

5. Regarding the aspect of negligence, which is the first issue, the evidence of P.W.1, who is the claimant, is that on 24.04.2004 while he was proceeding from Mupparam on his Chetak Scooter in order to go to Madikonda on personal work, when he reached Ganesh Stone Crusher near Elukurthy cross roads, at about 1.00 PM, the driver of the tractor and trailer bearing No.AP 15 TRM 299 drove the same in a rash and negligent manner in a high speed and dashed against his scooter from behind. The cross-examination of P.W.1 does not elicit any fact, which would suggest that the accident had occurred otherwise than because of the negligence on the part of the driver of

the tractor and trailer. Moreover, this can be considered as a case of *res ipsa loquitur*, where the thing speaks for itself, as it is a hit from behind and there is no contra evidence adduced by the respondent on the aspect of negligence. Hence, considering the evidence of P.W.1 and the contents of the complaint and the charge sheet, the negligence can be concluded against the driver of the tractor and trailer.

6. With regard to the claim of the appellant, his evidence as P.W.1 is that he sustained an injury to his right leg, injury below knee and other injuries all over the body. He was immediately shifted to MGM hospital, Warangal where he took conservative treatment as an inpatient from 24.04.2004 to 10.05.2004 and plaster of paris was applied on his leg. Ex.A2 is the x-ray report given by the Department of Radiology of MGM Hospital, which shows that there was injury on the right ankle and comminuted fracture on the lower 1/3rd of tibia. Ex.A3 is the wound certificate showing two grievous injuries, which are the fractures mentioned above, apart from simple injuries. Considering that, though there are two fractures, they are on the same leg, Rs.20,000/- is awarded towards pain and suffering. The appellant filed medical bills, which are to the tune of Rs.7,140/- and marked as Ex.A6. The nature of the injuries would suggest that the appellant might have incurred the said expenditure in all probability. Hence, a sum of Rs.7,140/- is awarded under the head medical expenditure. The appellant, having sustained fracture injury to his leg, might have been immobilized and would have required special

transportation to and from the hospital. Hence, a sum of Rs.10,000/- is awarded towards transportation and other incidental expenditure.

7. The evidence of P.W.1 with respect to his income is that he was doing business and earning Rs.5,000/- per month. Except his own testimony, there is no other evidence with respect to his income. But there is absolutely no reason to disbelieve his avocation. Considering that there is no credible evidence supporting his evidence, with respect to his income, Rs.3,000/- can be taken as the monthly income of the appellant. The nature of injuries would suggest that the appellant would have taken at least three months for recovering from the injury and hence, three months can be taken as the period of treatment, rest and recovery and the appellant would be entitled to compensation of Rs.3,000/- x 3 = Rs.9,000/- towards loss of income during the period of treatment, rest and recovery.

8. P.W.2, who is the Assistant Professor Orthopedic in MGM Hospital, testified with respect to the nature of injuries, period and nature of treatment. He stated that interlocking nail was inserted to the right tibia and that the appellant was admitted in the hospital two times. In the light of the evidence of P.W.2, the testimony of P.W.3 can be looked into where he stated that the appellant sustained disability of 35%, which has resulted in post traumatic stiffness, right knee with malunited fracture right tibia. He stated that he is working as Orthopedic Surgeon in Government Hospital, Kurnool and prior to transfer to Kurnool, he worked at MGM Hospital.

9. Considering the nature of disability stated by P.W.3, Rs.5,000/- is awarded towards loss of future amenities. Though P.W.3 stated that the disability is 35%, in relation to the avocation of the appellant, it can be taken as 10%, as he is stated to be running a rice mill, which might not involve standing and squatting for long hours. As the income of the appellant is taken at Rs.3,000/- per month, the disability of 10% would come to Rs.3,00/- per month and Rs.3,600/- per annum. The age of the appellant is stated to be 30 years at the time of the accident, which is not seriously disputed by the respondent and the multiplier relevant for the age of appellant, as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION¹ is 16. Hence, the appellant would be entitled to compensation of Rs.3,600/- x 16 = Rs.57,600/- towards loss of future income. Hence, in all the appellant is awarded with compensation as under:

1. Pain and suffering	Rs.20,000/-
2. Medical bills	Rs. 7,140/-
3. Transportation	Rs. 10,000/-
4. Treatment and recovery	Rs. 9,000/-
5. Future amenities	Rs. 5,000/-
6. Loss of future income	Rs.57,600/-
Total	Rs.1,08,740/-

The civil miscellaneous appeal is allowed awarding compensation of Rs.1,08,740/- with interest at 7.5% per annum from the date of petition till the date of realization and proportionate costs. Respondents 1 and 2 are jointly and severally liable to pay the

¹(2009) 6 SCC 121

compensation. Respondent No.2, who is the insurer, is directed to deposit the said amount of Rs.1,08,740/- within one month from the date of this judgment. As a sequel, the miscellaneous applications, if any, shall stand closed.

March 10, 2017
DSK

T. RAJANI, J

