THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A No.1329 of 2010

JUDGMENT:

The Appellant-Claimant aggrieved by the Award and Decree dated 6.5.2010 in M.V.O.P.No. 125 of 2009, preferred this appeal raising various grounds, besides contending that the award and the conclusions arrived at by the Tribunal are based on mere surmises and conjectures, that the Tribunal ought to have held that the respondents are jointly and severally liable to pay compensation in view of its finding that the accident occurred due to rash and negligent driving of the auto and that the granting of Rs.21,000/- compensation against the claim of Rs.2,00,000/-, is void and illegal.

2. The Appellant further contended that the Tribunal erred in refusing to award compensation under the head of disability as against medical evidence of the doctor and there is no justification in exonerating the 2nd respondent from its liability in view of the existing insurance policy.

3. The claim of the Appellant-Claimant, in brief, is that on 6.9.2008 at 2 P.M., while the appellant and others were travelling in auto bearing No. AP 07 TT 9335, the driver of the auto drove in a rash and negligent manner and he speeded while getting on to the road on the road margin, and as a result, the auto turned turtle and the Appellant sustained injuries, including fracture to left hand and also crush injury.

4. Immediately, the Appellant, along with other injured persons was shifted to G.G.H., Guntur and later shifted to Lalitha Super Speciality Hospital, Kothapet, Guntur.

5. The contention of the Appellant is that she was earning Rs.3,000/- per month as a coolie, and due to injuries, she became permanently disabled and lost all earnings.

6. The Tribunal, having considered the pleadings of both the parties, settled the following issues for trial:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the Auto bearing No. AP 07TT 9335 and that resulted in causing injuries to the petitioner?
2. Whether the petitioner is entitled to compensation, if so, to what amount and against whom?
3. To what relief?

7. To substantiate her claim, the Appellant-Claimant examined P.Ws 1 and 2 and got marked Exhibits A1 to A3 and on behalf of the 2nd respondent, R.Ws1 and 2 were examined and Exhibits B1 to B6 were got marked.

8. The contention of the Appellant is that the Tribunal refused to grant compensation for the disability she suffered, and the contention of the Insurance Company, the 2nd respondent, is that the disability of the Appellant is not supported by any medical documentary evidence, and it is only grievous hurt.

9. The injured (Appellant), Kancherla Mariyamma is examined as P.W1. The consistent evidence of PW1 is that she sustained severe injuries, including fracture to the left hand and had also crush injury and she was admitted to G.G.H., Guntur and after first aid, she was shifted to Lalitha Super Speciality Hospital.

10. The Doctor, who examined PW1, is examined as PW2. He adduced his evidence that PW1 was admitted to Lalitha Superspeciality Hospital on 7.9.2008 and in the accident, she sustained the following three injuries:

1. Deglowed injuries with exposure of bone about 20 x 20 cm., over left leg. The wound is infected.
2. An abrasion about 2 x 2 cm., over right arm.
3. An abrasion about 3 x 3 cm., over left arm.

The same injuries are also noted in Exhibit A2, Wound Certificate. It is further the evidence of PW2 that PW1 underwent repeated debridement and finally, skin grafting was done for the raw area over the left leg and knee joint and the Appellant was discharged on 5.10.2008. In the cross-examination, PW2 admitted that there is no fracture to bone and it is only soft tissue injury. He also admitted that there is no mention about skin grafting in Exhibit A2. The stiffness of the knee joint, which he deposed in the chief examination, as 15 to 20%, is not mentioned in Exhibit A2. His evidence is that he physically examined PW1 before entering the court but no reports were taken and examined by PW2 before entering the court premises.

11. The Tribunal considered the consistent evidence of PWs 1 and 2 and also the admission of PW2 during cross-examination and came to the conclusion that except issuance of Exhibit A2, no further certificate was issued by PW2 showing that the Appellant sustained injuries and partial disability. As admitted by PW2, he did not advice for any X-ray and the Appellant did not go through any medical tests with follow-up treatment and that he examined the Appellant physically at the court premises but did not record his observations on any paper. No disability certificate was issued by PW2. The oral evidence of PW2 on the alleged disability does not merit any consideration.

12. In view of the clear admission of PW2 that there is no fracture to the bone and it is only soft tissue injury and in the absence of any X-ray or any disability certificate, the Tribunal is perfectly right in holding that the Appellant has not suffered from any such disability.

13. It is the further contention of the Appellant that the Tribunal erred in exonerating the Insurance Company from liability. But the 2nd respondent-Insurance Company contented that as the driver does not possess valid driving licence, the finding of the Tribunal exonerating the Insurance Company is sustainable.

14. RW1 is an Assistant of the 2nd respondent-Insurance Company, whose evidence is that the Insurance Company issued original Insurance Policy Exhibit B1 in favour of the 1st respondent for Vehicle No. AP 07 TT 9335 and the evidence of RW1 goes to suggest that the vehicle bearing No. AP 07 TT 9335 is insured with the 2nd respondent-Insurance Company which is in force with effect from 27.6.2008 to 26.6.2009, whereas the accident occurred on 6.9.2008, by which date Exhibit B1 policy was in force.

15. The further evidence of RW1 is that the driver of the vehicle must possess a driving licence for carrying passengers, but the driver of the vehicle No. AP 07 TT 9335 was not carrying a valid and effective driving licence to drive the passengers on commercial vehicle, i.e., transport, auto etc., on the date of the accident. The Insurance Company obtained the driving licence particulars of the driver from the Additional Licencing Authority, Guntur showing that the driving licence bearing No. 5852/G/1999, dated 23.9.1999 belongs to the driver, which is Exhibit B2, according to which the driver possessed only Light Motor Vehicle Non-transport driving licence as on the date of the accident, which is valid upto 22.9.2019. The further evidence of RW1 is that at the time of accident, the

auto was overloaded, which is in violation of the terms and conditions of Exhibit B1 policy.

16. In support of the Insurance Company, the Insurance Company also examined the Junior Assistant in the RTA Office, Guntur, whose evidence is that he was authorized to give evidence as per Exhibit B5 and Exhibit B6 is the driving licence particulars of the driver of the auto. The auto is a passenger carrying auto and the driver of the auto must possess driving licence for auto rickshaw transport. But, the driver, at the time of the accident, possessed only Light Motor Vehicle non-transport driving licence and he was not authorized to drive passenger-carrying vehicle. The evidence of RW2 is tested by cross-examination, where he deposed that the driver, Devadasu Korruru was eligible for obtaining Light Motor Vehicle transport licence one year after issuance of the non transport driving licence, subject to passing the test being conducted. No doubt, the auto rickshaw is a light motor vehicle which is meant for carrying passengers, and therefore, compulsorily the driver should possess the Light Motor Vehicle transport driving licence.

17. The Tribunal, having considered this fact, discussed elaborately and came to the conclusion that the driver who drove the offending vehicle at the time of the accident, shall possess the driving licence for auto rickshaw transport, but, the driver was holding the non transport licence, and as such, is not authorized to drive the passenger-carrying vehicle. Therefore, I do not find any error in such conclusion.

18. With regard to compensation granted, the Tribunal, having considered the corroborative evidence of PWs 1 and 2, came to the conclusion that PW1 was admitted in Lalitha Super Speciality Hospital on 7.9.2008 and discharged on 5.10.2008. According to the evidence of PW2 and Exhibit A2, Injury No.1 is grievous injury and Injury No.2 is simple in nature. The Appellant could establish

that she sustained one grievous injury and two simple injuries on the strength of the deposition of PW2-Doctor who produced Exhibit A2, Wound Certificate, but failed to prove the disability. According to the corroborative evidence of PWs1 and 2 and Exhibit A2, PW1 took treatment in Lalitha Super Speciality Hospital for one month from 7.9.2008 to 5.10.2008 and during that period, she must have incurred amounts towards medical expenses.

19. With regard to the medical expenditure, the Appellant claimed Rs.70,000/- towards medical expenses, follow-up, extra nourishment and loss of earnings. She did not file any piece of paper in support of the medical expenses. Since the Appellant sustained one grievous injury and two simple injuries and was in the hospital for one month and skin grafting was done, certainly, she would have incurred major amount towards treatment and medicines, towards which no amount was awarded by the Tribunal. Certainly, she is entitled to compensation for pain and suffering, appropriate amount for injuries and also medical expenses.

20. The Tribunal awarded Rs.10,000/- towards grievous injury and @ Rs.3,000/- for each simple injuries (2) in number and Rs.5,000/- for loss of earnings.

21. So far as loss of earnings is concerned, in the evidence of PW1, it is stated that she was earning Rs.3,000/- per month as a coolie prior to the accident and she was in hospital for one month, and the Tribunal awarded Rs.5,000/- towards loss of earnings for the said month, which is reasonable, and does not call for any interference.

22. Having considered the nature of the injuries and the skin grafting treatment which the Appellant took in the super speciality hospital for a period of one month, I am of the considered view that the Appellant is entitled to an

amount of Rs.35,000/- towards compensation of the grievous injury and @ Rs.5,000/- each for the two simple injuries, totaling Rs.10,000/-, Rs.5,000/- towards pain and suffering, Rs.6,000/- towards medicines, Rs.10,000/- towards treatment and another Rs.5,000/- towards extra nourishment. In total, the Appellant is entitled to compensation of Rs.71,000/. Accordingly, the Award and decree is set aside and modified and the Appellant is awarded an amount of Rs.71,000/- towards compensation and subsequent interest of 8% per annum against the 1st respondent from the date of petition, i.e., 12.1.2009 till the date of deposit or payment, after deducting the amounts, if any, already deposited, and the said amount shall be deposited within a period of one month from the date of receipt of a copy of this order by the 2nd respondent, who is the insurer and who issued the Exhibit B1 policy, since the Appellant is a poor lady and a daily labour. The 2nd respondent can recover the said amount from the 1st respondent treating the award itself as a decree.

23. On such deposit, the Appellant-claimant is permitted to withdraw the same.

24. The Appeal is partly allowed without costs. Advocate Fee Rs.2,000/-. Consequently, miscellaneous petitions pending, if any, shall stand closed.

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N.BALAYOGI, J

Date: 09.11.2017
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