

HONOURABLE SMT. JUSTICE T. RAJANI

MACMA No.470 of 2008

%07.04.2017

Smt. Gangone Vijayalaxmi

...Appellant

VERSUS

\$ Mr. D.Madan Kumar and another

...Respondents

< **GIST:**

> **HEAD NOTE:**

!Counsel for Appellant: Sri Venkateshwar Varanasi

^Counsel for 2nd Respondent: Sri G.Vasantha Rayudu

? Cases referred



SMT. JUSTICE T.RAJANI

MACMA. No.470 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the lower Court, assailing the judgment dated 28.04.2006 passed in O.P. No.990 of 2002 by the IV Additional District Judge (FTC), Nizamabad by virtue of which, the lower Court dismissed the said O.P. that was filed by the claimant seeking compensation for the injuries sustained by her in a motor accident, which took place on 25.03.2002 at 5.00 pm.

Heard the learned counsel on either side and perused the material on record.

At the hearing, the learned counsel for the appellant argued on the aspect of contributory negligence, which was awarded by the lower Court at the rate 25% against the claimant. No interference is felt necessary with regard to the judgment of the lower Court, so far as its conclusion that there was contributory negligence on the part of the claimant is concerned, as, it was admitted by the claimant that she was sitting on the edge of the Jeep thereby contributing to the accident. The learned counsel for the appellant submits, by bringing to the notice of this Court, that apart from the claimant another girl also sustained injuries and died subsequently and seeks to hold that there is no contributory negligence on the part of the claimant. In this regard, this Court sees that there is absolutely no evidence with regard to where the said injured girl was sitting. The FIR shows that the driver of the Jeep dashed against an electrical pole, which speaks about gross negligence on the part of the driver of the Jeep. But however, negligence of the claimant cannot be ruled out totally and interests of justice would be met if it is concluded that there was contributory negligence on the part of the claimant, if not to an extent 25%, to an extent of 15%.

After having rendered a finding that the accident occurred due to the negligence of the driver of the crime vehicle, the lower court dismissed the claim of the claimant, going by the understanding that Dr.T.Narsing Rao, who issued Ex.A-3, wound certificate, is a stock witness. The approach of the lower Court in that regard does not find favour with this court. It may be true that said Dr.T.Narsing Rao is a stock witness. But, the observation of the lower Court to that effect does not carry any basis. Apart from that while dealing with the claim under a beneficial legislation the approach of a Court should be different from what it has been by the lower court, in this case. A comprehensive study of the documents would have perhaps led the court to a different conclusion.

The report given with regard to the accident is marked as Ex.A-1, which shows that the accident caused injuries on the head and legs of the claimant and that the claimant was taken for treatment to the hospital at Nizamabad. Hence, *prima faice*, the fact that the petitioner sustained injuries in this accident is proved.

Ex.A-3 is the requisition given by the office incharge of P.S. Yedpalli to the medical officer incharge Government Civil Hospital, Nizamabad, to examine the claimant and render opinion. On the reverse of the same requisition Dr.T.Narsing Rao mentioned the injuries sustained by the claimant. Hence, by the above fact it can be concluded that the requisition has reached the hands of Dr.T.Narsing Rao and that he has examined the claimant. The above two facts together would show that the claimant was nevertheless examined as a patient, in which case the same is expected to be reflected in the records. There is no contra evidence produced with regard to the injuries allegedly sustained by the claimant. The lower Court took pains to summon the Medico Legal Case (MLC) file from the said hospital to verify whether the claimant was

admitted in the hospital and found that there was no entry in the said MLC containing the admission of the claimant. Going by the fact of the absence of entry of the name of the claimant in the MLC, the lower Court disbelieved the very fact of the claimant sustaining injuries, which in considered opinion of this Court is not proper. Obviously, the lower Court seems to have entertained a doubt with regard to the sustaining of injuries by the claimant, from the fact that Dr.T.Narsing Rao was a stock witness and it was prompted to call for the MLC, to verify the genuineness of the case and incidentally no entry was found in the MLC extract thereby giving strength to the opinion of the lower Court. But the probable assumption that can be made in this case, by looking at the FIR and requisition given by the Police, is that the claimant sustained injuries and was sent to the hospital. The lower Court stopped short of further probing into the aspect of non entry of the name of the claimant in the MLC, to understand the reason for the said non entry. The reason for the said non entry may not be the falsity of the injuries alone. The lethargy of the concerned can also result in such non entry and the same would have come out if there had been a further probe. Hence, in the above circumstances, it has to be believed that the claimant sustained injuries as mentioned on the reverse of the requisition given by the Police, which are two fracture injuries i.e. fracture of left patella and fracture of 3rd and 4th left ribs and considering the same, this Court is of the opinion that interests of justice would be met if Rs.30,000/- is awarded towards pain and suffering caused by two fracture injuries and accordingly, Rs.30,000/- is awarded.

Further, this Court is also not in a position to uphold the genuineness of the medical bills for the reason that the claimant did not examine any doctor to testify about the genuineness of the said bills. The name of Dr.T.Narsing Rao is found on all the bills and the lower Court did not believe the trustworthiness of Dr.T.Narsing Rao and this

Court opines that though there is no basis laid for the belief of the lower Court about Dr. T.Narsing Rao being a stock witness, there must have been some reason for the lower Court to come to that conclusion. However, an amount of Rs.10,000/- can be awarded considering probabilities of the case and the fracture injuries having been sustained to left patella and ribs of the claimant, might have disabled her for at least two months from attending her duties. Even if she is considered as a housewife her services can be valued, in the least, at Rs.3,000/- per month. Hence, Rs.6,000/- is awarded under the head of loss of services or income as the case may be, during the period of treatment rest and recovery, thereby making the total award as Rs.46,000/- out of which, Rs.6,900/- is deducted towards contributory negligence of claimant, thereby making the award as Rs.39,100/-.

In the result, appeal is partly allowed by awarding Rs.39,100/- as compensation, with interest at the rate of 7.5% per annum from the date of petition till the date of realization. Both the respondents shall be liable for the award amount and they are directed to deposit the award amount within a month from the date of this award. Proportionate costs are ordered.

JUSTICE T.RAJANI

Date: 07.04.2017
LSK