

SMT JUSTICE T. RAJANI

MACMA.No.118 of 2006

JUDGMENT:

This appeal is preferred by the insurance company - third respondent in OP.No.509 of 2001 assailing the order of the Chairman, III Motor Accident Claims Tribunal, Warangal dated 26.09.2005 on the ground that the tribunal ought to have apportioned the negligence between the driver of the crime vehicle and the claimant, who was driving the vehicle. The tribunal erred in not appreciating the evidence of R.W.1 and Exs.B1 to B3. The judgment of the tribunal below is also erroneous awarding Rs.3,50,000/- with interest towards future expenditure and Rs.3,00,000/- towards permanent disability. The tribunal ignored the medical evidence, which is clear that the disability may be reduced to 10% to 15% after future surgery.

2. Heard counsel for the appellant. Counsel for the respondents did not appear.

3. At the hearing, counsel for the appellant contends that the deposition given by the claimant No.1 before the criminal Court would clearly give an inference that he also contributed for the accident. It would be beneficial to look into the said deposition, which is marked as Ex.B3. The cross-examination is very cryptic containing only one suggestion that the accident occurred while the claimant was cleaning the vehicle glass and changing the caret and he could not see front side. In the chief examination, the claimant narrated the manner of accident by stating that he could not see from the glass properly as

there was some dust. He cleaned the glass, while driving, by slowing down the vehicle but he could not grasp where the lorry was coming or going towards right or left, as the driving of the lorry is not in a proper way. He took his Tata Sumo towards extreme left towards Warangal side. In the meanwhile, the lorry came directly and dashed against his vehicle. There is absolutely nothing in the deposition of the claimant before the criminal Court, which would allow the Court to draw an inference that he was also negligent in driving the vehicle and thereby contributed to the accident.

4. As rightly observed by the Court below, the evidence of the claimant before the criminal Court is only that he cleaned up the glass as it was dusty. He did in any term state that the accident occurred while cleaning the glass. The accident, admittedly, occurred during midnight and the evidence of the claimant before the criminal Court that he could not see whether the lorry was coming to the right or left might be due the reason of the vehicle coming with headlights, which may not allow the driver of the opposite vehicle to see the vehicle coming from the opposite direction properly. Except relying on the evidence of the claimant given before the criminal Court there is no positive evidence adduced by the appellant to prove that the accident occurred due to the negligence of the claimant also. Hence, there is no need to differ with the finding arrived at by the Court below on the aspect of negligence.

5. The appellant also questions the propriety of the award made under various heads. Though the record shows that amputation was suggested, there is no evidence to state that any amputation was,

in fact, done. The doctor, who was examined as P.W.2, did not speak about any amputation. The Court below awarded separate amounts for each of the fracture injuries. The fracture injury by itself does not deserve any award of compensation. Consequences resulting from the fracture injury, like pain and suffering etc. have to be taken care of while awarding compensation. Apart from awarding separate amounts towards each of the fracture injuries, the Court below awarded another Rs.50,000/- towards pain and suffering, which cannot be sustained. Moreover, Rs.50,000/- was awarded fracture lowered radius left, acute inferior MI primary, PTCA with stent done. But Rs.12,500/- was already awarded for fracture lower end radius left. The remaining injuries do not relate to the accident. They relate to heart problem of the claimant. There is absolutely no evidence fixing any nexus between the heart problem and the injuries sustained in this accident. Hence, the amount awarded under the said head also cannot be sustained.

6. The expenditure for future treatment of the petitioner, as stated by P.W.2, was 5,60,000/-. The lower Court, considering the evidence of P.W.2 that the expenditure may vary from hospital to hospital, awarded only Rs.3,50,000/-, which is found to be just. Hence, no interference is required in that regard.

7. The medical bills filed are to an extent of Rs.4,94,168.35/-, which according to P.W.2, include the bills pertaining to the heart problem of the claimant, but he could not clarify as to which bills pertain to his treatment of heart problem and the cross-examination was not pointed towards eliciting the said clarification and the

respondents did not take any steps to examine any expert, who could speak about the medical bills pertaining to the heart problem. P.W.2, who is the Consultant Cardiologist, Apollo Hospitals, spoke about the treatment pertaining to the heart problem, which shows that Angioplasty was done. He also could not state as to what would be the exact amount collected by Apollo Hospitals for cardiac treatment. However, considering that Angioplasty was done and treatment was given for the cardiac problem and that some of the medical bills pertain to heart problem, with an amount of guess work, an amount of Rs.50,000/- can be deducted towards the medical bills for the treatment for heart problem. The Court below reduced Rs.25,000/- from the medical bills by considering that they are telephone bills. Hence, altogether Rs.75,000/- stands reduced from the bills of Rs.4,94,168.35 ps., which comes to Rs.4,19,168.35/-. The Court below after deducting Rs.25,000/- awarded Rs.4,50,000/-. The said amount can be substituted with Rs.4,19,169/-.

7. The counsel for the appellant, seriously, assailed the award of the Court below with regard to granting Rs.3,00,000/- by considering that the appellant lost his promotional chances. But the evidence of P.W.1, who is the claimant, does not speak about any loss of promotional chances. He did not examine any one from his department to speak about the effect of the injuries and the disability on his promotional prospects. This Court also considers that awarding Rs.3,00,000/- on that count is not justified. In all, the compensation awarded by the Court below is reduced as indicated

[(Rs.14,00,000/- - Rs.4,75,000/- (compensation reduced under different heads) = Rs.9,25,000/-], from Rs.14,00,000/- to Rs.9,25,000/-.

8. Hence, the award of the tribunal is modified to the extent indicated above and the rest of the award is left uninterfered with.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

June 23, 2017
DSK

T. RAJANI, J

