

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE
OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

M.A.C.M.A.No. 1968 OF 2006

Between:

Kamle Kamalakar ... Appellant

AND

Ch.Gopal Krishna and another ... Respondents

Date of Judgment Pronounced : 28-07-2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SMT. JUSTICE T.RAJANI

1. Whether Reporters of Local newspapers
May be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may
be marked to Law Reporters/Journals? Yes/No
3. Whether her Lordship wishes to see the
Fair copy of the judgment? Yes/No

T.RAJANI, J.

THE HON'BLE SMT. JUSTICE T.RAJANI*+M.A.C.M.A.No. 1968 OF 2006****%Dated: 28-07-2017**

#Kamle Kamalakar,

S/o Sakaram, 47 years,

Business, R/o Plot No. 9,

Mega Township Ayyappa Nagar,

Vijayawada, Andhra Pradesh

... Appellant

VERSUS

\$Ch.Gopal Krishna,

S/o not known, 40 years,

Owner of jeep, R/o Plot No. 9,

Mega Township Ayyappa Nagar,

Vijayawada, Andhra Pradesh, and another

... Respondents

!Counsel for the appellant : Sri K.Sarala Mahender Reddy**^Counsel for respondent No. 2 : Sri N.J.Sunil Kumar****<GIST :****>HEAD NOTE :****?Cases referred :**

1. 2004 (5) ALD 400
2. 2003 (5) ALD 162

THE HON'BLE SMT. JUSTICE T.RAJANI**M.A.C.M.A.No. 1968 OF 2006****JUDGMENT:**

Being aggrieved by the judgment dated 27-02-2006 in O.P.No. 919 of 2003 on the file of the learned Motor Accident Claims Tribunal – cum – IV Additional District Judge (FTC), Nizamabad (for short, 'the Tribunal'), the present appeal is filed by the petitioner therein on the ground that the Tribunal brushed aside the medical evidence and did not appreciate the fractures and other injuries and the expenses incurred by the petitioner and did not award compensation under all heads and rejected the claim on technical grounds.

Heard both counsel.

A perusal of the order of the Tribunal shows that it took up exercise of calling for medical records from CSI Hospital, Doodgoan; PHC, Balkonda; and Government Hospital, Nizamabad, on the basis of the testimony of P.W.1 that he took treatment in all the above three hospitals. Ex.A2, wound certificate issued by PHC, Balkonda, shows that the petitioner sustained fracture to right forearm, fracture to right middle finger and he lost his 23 teeth. Considering that the doctor, who gave opinion on Ex.A2, was not examined, the Tribunal called for the medical records from all the above hospitals, to assess the credibility of Ex.A2. The Superintendent, Government Hospital, Nizamabad, sent a letter stating that there was no entry in MLC register on 16-08-2002 and in-patient register on 17-08-2002. The Deputy Civil Assistant Surgeon, Balkonda, addressed a letter stating that only a copy of MLC was available in their hospital records and the same was marked as Ex.C3 which is nothing but Ex.A2.

Learned counsel for the appellant-petitioner placed reliance on ***Gundala Mallamma Vs. T.Anka Prasad another***¹ in answer to the ruling in ***United India Insurance Company Limited, Hyderabad Vs. Mohd. Khaja Rasool Sayyed @ Mohd. Khaja Main Shaik and another***² relied upon by the Tribunal. In the latter judgment, it was held that any document produced by any party to *lis*, necessarily required to be proved in the manner provided under the Evidence Act, 1872 (for short, 'the Act'), and therefore medical certificate and medical bills produced by the petitioner are required to be proved in the manner provided under the Act. However, in the former judgment, it was held that wound certificate is a public document and it can be taken as a basis even without the doctor, who issued it, being examined. Even my opinion goes on the same lines as that expressed in the former judgment, since, when there are no circumstances creating any suspicion on the medical certificate, it would be just to rely on it and when there is absolutely no attack made on the genuineness of Ex.A2, there need not be any reason to disbelieve Ex.A2. It is only when a document is shrouded by suspicious circumstances or is put to serious question by the opposite party, that it should be tested otherwise before relying on it.

As per the evidence of the petitioner, he first went to CSI Hospital, Doodgoan, and the certificate issued by the said hospital, which is marked as Ex.C2, shows that only one deep cut injury to right middle finger was noted. When the hospital records of Balkonda show that the patient *i.e.* the petitioner was referred to by police from CSI Hospital, Doodgoan, there can be only one assumption made with regard to Ex.C2 *i.e.* noting of the injuries by concerned doctor was not properly and accurately done. The deep cut in the right middle

¹ 2004 (5) ALD 400

² 2003 (5) ALD 162

finger might have later been diagnosed with an underlying fracture. The other injuries cannot be related to any other incident except this accident as he was directly referred to PHC Balkonda, from CSI Hospital, Doodgoan. Hence, this Court does not find any embargo and any reason to disbelieve Ex.A2. Ex.A2 discloses that the petitioner lost his 23 teeth and the Dental Surgeon gave the said opinion. Apart from that, there is a fracture on right middle finger and right forearm. Hence, considering the above injuries, adequate compensation needs to be awarded. The Tribunal, though believed Ex.A2, relied only on Ex.C2 which shows only one injury. There is a categorical observation in the order of the Tribunal that "it has already held that the petitioner has proved that Ex.A2 wound certificate" but contrary to the said observation, it held that "therefore the petitioner has miserably failed to establish that he sustained loss of 23 teeth and fracture of forearm. However, for the aforementioned reasons, loss of 23 teeth and fracture of forearm can be believed.

The Tribunal awarded Rs.5,000/- for one grievous injury which is evidenced by Ex.C2 and failed to award any compensation for the injuries evidenced by Ex.A2. Hence, it is appropriate for me to award compensation for all the injuries evidenced by Ex.A2. For the fracture of right forearm, an amount of Rs.15,000/- is awarded; for the fracture of right middle finger, Rs.10,000/- is awarded and for the loss of 23 teeth, a compensation of Rs.25,000/- is awarded. The petitioner did not put forth any evidence with regard to the treatment taken by him for the loss of his teeth but however it can be considered that the loss of 23 teeth would result in loss of valuable amenities of life and hence, Rs.15,000/- can be awarded towards loss of future amenities of life. The Tribunal awarded Rs.5,000/- towards medical expenses, perhaps considering that the petitioner was treated in Government Hospitals. Hence, in the light of the said fact, I do

not propose to interfere with the said order but however the petitioner deserves to be awarded some amount towards transportation and incidental expenses, which can be Rs.10,000/-. The petitioner is stated to be doing transport business. He did not explain the nature of his business but however the fracture injuries would disable him from attending his work for atleast a period of one month. The income of the petitioner may not be material, as his business was nevertheless being carried on in his absence. But however supervision of the petitioner would be necessary for carrying on the business effectively. Hence, with an amount of guess work, the said loss can be estimated at Rs.3,000/-. Hence, in all, the compensation awarded by the Tribunal stands enhanced to Rs.83,000/-.

Learned counsel for the respondent-insurance company brought to the notice of this Court the judgment of this Court in M.A.C.M.No. 2108 of 2006 which arose out of the same accident, whereby this Court dismissed the appeal confirming the order of the Tribunal which is Rs.5,000/-. Learned counsel contends that this Court found the claim made by the petitioner in that case as bogus claim. But the facts of the present case are otherwise and they do not prove the claim to be a bogus claim as was done in that case.

The appeal is accordingly partly allowed with proportionate costs. The award shall relate back to the date of decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the order of the Tribunal.

Pending miscellaneous petitions, if any, in this appeal shall stand closed in consequence.

Date: 28-07-2017
JSK

T.RAJANI, J.

