

THE HON'BLE SRI JUSTICE N.BALAYOGI

MACMA No.1327 of 2010

JUDGMENT:

The appellant-Insurance Company prefer this appeal against the decree and order, dated 20.08.2009 in MVOP No. 32 of 2008, on the file of the Judge, Family Court-cum-Additional District Judge, Guntur, besides other grounds, on the ground that the driver of the Crime-Vehicle charge sheeted for the offence under Section 181 of Motor Vehicles Act, and hence, the Insurance Company is not liable to pay any compensation. It is further contended that the Tribunal failed to see that the driver of the insured auto had only a Light Motor Vehicle driving license and not authorized to drive passengers' carrying vehicle. The learned Tribunal erred in assessing the disability at 40% and also in granting Rs.41,500/- towards medical bills in the absence of any reliable evidence, and awarded the compensation exorbitantly with interest @8% per annum.

2. On the other hand, the Respondents contended that the Driver was having a valid driving license and the findings of the Tribunal are true and correct. The assessed disability is based on the evidence on record and nothing found in the Award, warranting interference.

3. The claim of the 1st Respondent, in brief, is that on 02.11.2007, while she was traveling in the offending auto, along with some others, to go to Nagarjuna Sagar from Macherla, at about 12.15 p.m., when the auto reached near Nagarjuna Residential High School in Vijayapuri South, the driver drove the auto in a rash and negligent manner due to which the auto turned turtle. As a result, she sustained injuries to her both legs and shifted to Macherla Government Hospital and from there to Government General Hospital, Guntur, where she had undergone surgeries to her legs. Thereafter, she was shifted to Yashaswi Hospital, Guntur, and again

operated by Dr. Pamana, M.S.(Ortho), where she was treated for a long time. The claimant used to earn Rs. 3,000/- per month, and due to the accident, she lost her future earning capacity.

4. Having considered the above pleadings of both the parties, the Tribunal settled the following issues for trial:-

“(1) Whether the accident occurred due to rash and negligent driving of the driver of Auto bearing No. AP 07 W 9069?

(2) Whether the petitioner is entitled to compensation and if so, to what amount and against whom?

(3) To what relief?’

5. To prove her claim, the claimant/injured examined PWs 1 and 2 and marked Exs.A1 to A8. On behalf of the Respondents, RWs 1 and 2 were examined; Exhibits B1 to B4 and Ex.X.1 were marked.

6. Heard both the learned counsel and perused the entire material on record.

7. There is no dispute regarding the findings of the Tribunal with regard to the rash and negligent driving of the Auto Driver. The appellant contends that without any reliable evidence, the Tribunal assessed the disability at 40%and also awarded Rs.41,500/- towards medical bills.

8. The PW1 is the claimant and the injured. Her evidence clinches the issue that on 02.11.2007 she was traveling in an Auto bearing No. AP 07 W 9069 along with other passengers. In the accident, PW-1 sustained fractures of both legs, above right ankle and left tibia. The right leg fracture was treated by applying an external fixator, after debridgement and plastic surgery to close wound. For the left tibia, inter locking nail was done and she was discharged from the hospital, and finally on 11.02.2008, the external fixator was removed from her right leg, and on

examination the Doctor found gross deformity of right leg with angulation, above right ankle, leading to shortening of leg, with restricted movements of right ankle.

9. PW.2 is a Doctor and Orthopedic Surgeon in Yasaswini Hospital, Guntur, whose evidence is that on 02.11.2007, PW-1 was admitted in the hospital with fractures of both legs, above the right ankle and left tibia. The evidence of PW.2 corroborates the evidence of PW.1 that her right leg fracture was treated by applying external fixator, after debridgement and plastic surgery to close the wound and for the left tibia, inter locking nail was done on 13.11.2007 and on 22.12.2007, P.W.1 was discharged, and finally on 11.02.2008 the external fixator was removed from her right leg, and, on examination, he found gross deformity of right leg with angulation above right angle, leading to shortening of leg with restricted movements of right ankle. The left knee joint movements were restricted in terminal degree and PW.1 is unable to walk without support and she cannot attend to any labour work. On the basis of her condition, he has assessed the disability at 40%

10. The Tribunal, having considered the oral evidence of PWs.1 and 2, coupled with the evidence of Ex.A.4 to A.8 i.e., discharge summary, OP Chit, X-rays etc., came to the conclusion that on 02.11.2007 at 2.15 p.m., PW1 sustained fractures of both legs, above right ankle and fracture of left tibia, and her right leg fracture was treated by applying external fixator after debridgement and plastic surgery and for the left tibia inter locking nail was done. It is also observed that though on 22.12.2003, P.W.1 was discharged, finally on 11.02.2008, the external fixator was removed from her right leg, and on examination the doctor found gross deformity of right leg, leading to shortening of leg with restricted movements of right angle.

Apart from that, extensive scoring over right leg was observed and PW1 was unable to walk without support and she cannot attend any labour work and as such, the disability was assessed at 40%. Accordingly, the Tribunal accepted the evidence of PWs. 1 and 2, and Exhibits A2, 4, 5 to 8. Hence, there is no substance in the contention of the learned counsel for the Appellant that the Tribunal had wrongly accepted the disability at 40% assessed by the Doctor, without any evidence.

11. Further, the contention of the Appellant is that the Tribunal failed to see that the appellant has examined the concerned Road Transport Authority to prove violation of driving license and discharged its initial burden. But, a perusal of the record shows, that the appellant examined the Legal Manager of the 2nd Respondent-company as RW1, and Sub-Inspector of Police as RW.2, who recorded the statements of the injured and the witnesses during the course of investigation, and none was examined from the Regional Transport Authority or the Respondents did not produce any extract of the driving license of the Auto Driver. Hence, the contention of the Respondents that the Tribunal failed to see that the Appellant has examined the concerned Regional Transport Authority to prove its case, is false.

12. On the other hand, to prove her case, the claimant filed a xerox copy of driving license of the Auto Driver i.e., Ex.X.1, issued by the concerned authority. From a perusal of Ex.X.1, it is very clear that the Light Motor Vehicle Non-Transport license is issued in favour of the auto driver and valid up to 03.07.2019. It is also disclosed that the driver possessed Motor Cab Transport License, which is valid up to 04.03.2008. He also possessed Badge Number to drive the passenger vehicle. It shows that the driver of the auto, at the time of the accident, possessed Light Motor

Vehicle Non-Transport license and motor cab driving license, with badge number. Hence, it is evident that the driver was authorized to drive the auto, which is less than 7,500 Kgs.

13. RW.2 is the Sub-Inspector of Police, who investigated the Crime No.113/ 2007 and examined witnesses. He also stated that he came to know that the driver of the auto is not having suitable driving license to drive the crime auto and was prosecuted under Section 181 of Motor Vehicles Act. The Tribunal relied upon a decision of this Court in *National Insurance Company Limited Vs. Totoji Varalaxmi*¹ wherein this Court held that the burden to establish the grounds on which the insurance company wants to avoid the liability, alleging that the driver of the vehicle is not holding a valid driving license is initially on the insurance company. It is further held that merely basing on the averments in the charge sheet, it cannot be said that the driver has no valid license, in the absence of any documentary evidence.

14. In this case, the Appellant had issued notice to the 2nd respondent in the appeal and also to the driver of the auto, calling upon both of them to give intimation to the insurance company in writing immediately about the occurrence of the accident and in the event of claim, submit certified true copies of the policy, registration certificate, road permit with regard to the auto and also copy of charge sheet, First Information Report, evidence certificate, license of the driver at the time of incident etc. But, no such information was sent to the Insurance Company by the owner and driver of the offending auto. Notices sent to both owner and driver were returned with an endorsement that the owner was continuously absent for seven days and the driver expired. The insurance company issued Ex.B-2 notice,

¹ 2008(5) ALD 442

as per the statutory obligation, but not received either by the owner or by the driver of the offending auto. The Road Transport Authority is not examined and the insurance company failed to file extract of the driving license of the driver of the Auto, at the time of accident. In such circumstances, the Tribunal has rightly relied on the above decision and come to the conclusion that the driver is competent to drive the offending auto, which is less than 7500 Kgs. Therefore, the Insurance Company cannot avoid its liability to pay the compensation.

15. Further, the plea of the Appellant that the Tribunal had failed to see that the appellant has examined the concerned Regional Transport Authority to prove the violation of driving license is false, as no such person from the Regional Transport Office was examined and no extract of driving license was filed.

16. With regard to the granting of medical expenses of Rs. 41,500/-, there is corroborative evidence of PWs 1 and 2, wherein it is clearly stated that PW.1 was treated as an 'in-patient' and surgery was conducted on 13.11.2007, and after discharging also she attended the follow-up treatment, and hence, she is unable to walk properly and became disabled, which is assessed at 40%. The Doctor, who treated the PW1 and examined as PW2, is the proper and competent person. Based on Ex.A4 to A8, her clinching evidence is that she is 40 years old and was hale and health and used to earn Rs.3,000/- per month by doing cooli work. Further, there is no rebuttal evidence to the occupation and earnings of the injured claimant. In the absence of any such rebuttal evidence to the evidence of PW1, the Tribunal basing on the available on record, took the income of PW.1 as Rs.2,400/- per month and basing on the disability at 40% awarded Rs. 1,50,000/- towards compensation on the ground of

permanent disability. It also considered the evidence of PW.1 wherein it is stated that she spent Rs.50,000/- for treatment and medicines and Rs.20,000/- for special diet, attendant, transport and other miscellaneous expenses. She filed Ex.5 Hospital Bill issued by Yashaswi Hospital for a sum of Rs.41,500/-. In view of gravity of the injuries and long time treatment, the Tribunal awarded the said amount towards medical expenses. She also filed Ex.6 Medical Bills, which is supported by the in-ward prescription issued by the Doctor and awarded the same. Apart from that, the appellant was granted a sum of Rs.1,000/- towards extra-nourishment and Rs.1,000/- towards transportation and thus, the total award is Rs. 1,96,000/-.

17. In view of the above facts and circumstances, I am of the considered view that the Tribunal has rightly found that the driver, who drove the vehicle, was having a valid driving license, and granted the compensation basing on the material on record. The said findings of the Tribunal do not suffer any infirmity, warranting interference in this appeal. Thus, the appeal fails and is liable to be dismissed.

18. In the result, the appeal is dismissed with costs by confirming the award and decree dated 20.08.2009 of the Judge, Family Court-Cum-Additional District Judge, Guntur.

Advocate fee is fixed at Rs.2,000/-.

Consequently, the Miscellaneous Petitions, if any, pending, shall stand closed accordingly.

Dt:13.11.2017
Gs/ Kv

N. BALAYOGI, J

THE HON'BLE SRI JUSTICE N. BALAYOGI



MACMA No.1327 of 2010

JUDGMENT

Dt. 13.11.2017

Gs/ Kv