

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A.NO.454 OF 2010

JUDGMENT

The appellant - insurance company, aggrieved by the award dated 5.10.2007 in O.P.No.3055 of 2004 passed by the court of XVI Additional Chief Judge cum II Additional Metropolitan Sessions Judge at Hyderabad, preferred this appeal.

2. The learned counsel for the appellant contended that the owner of the crime vehicle – Tempo-trax violated the terms and conditions of the policy, as at the time of the accident, there were 19 passengers, and the capacity of the tempo-tax is only 12. It is further contended that the claimant did not suffer any disability and hence granting Rs.50,000/- towards loss of future earnings is erroneous. Further, granting Rs.50,000/- towards medical expenses in the absence of any substantial evidence, is illegal.

3. On the other hand, the contention of the respondents is that the award is legal, valid and do not suffer from any legal infirmity warranting interference.

4. A perusal of the record goes to show that 1st respondent / claimant filed the claim petition claiming compensation of Rs.2,00,000/- for the injuries sustained in the accident occurred on 20.07.2004.

5. The brief facts of the claim petition are that the claimant was traveling in temp trax bearing No. AP 24 V3497 from Suryapet to Hyderabad and when vehicle reached A. P. Longotam village, the driver of the vehicle drove the same in rash and negligent manner with high speed, lost control and dashed against the lorry bearing No. AAB 6669, which is coming in opposite direction.

6. The claimant sustained grievous injuries on head, fracture of left ankle and was treated as in patient in Kamineni Hospital, Narketpally.

7. The Insurance Company filed counter affidavit and while traversing the material allegations in the petition with regard to manner of accident and the injuries sustained, stated that the driver does not possess valid driving licence at the time of the accident. The driver of the lorry bearing No. AAR 6669 might have contributed for the accident.

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

1. Whether the accident took place on 20.07.2004 at about 2.30 p.m., due to rash and negligent driving of Temp Trax bearing No. AP 24V 3497, by its driver?
2. Whether the petitioner is entitled to claim compensation from the respondents? If so, to what amount and from whom?
3. To what relief?

9. In support of the claimant's case P.Ws.1 and 2 were examined and Exs.A-1 to A-9 were marked. On behalf of 2nd respondent – insurance company, R.W.1 was examined and Exs.B-1 and B-2 were marked.

10. In the grounds of appeal, the appellant / insurance company did not dispute the finding of the Tribunal that the accident was caused due to rash and negligent driving of the driver of the Temp Tax bearing No.AP 24V 3497.

11. The contention of the learned counsel for the appellant is that the capacity of the crime vehicle temp tax is 12 and at the time of accident, 19 persons were found traveling and as such, the driver lost control and caused the accident. Hence, the insurance company may be absolved from its liability. In support of this contention, the learned counsel has taken this court through the evidence of Administrative Officer of the Insurance Company, who was examined as R.W.1. He deposed that as per Ex.B-2 policy, there should not be over load and the driver must possess valid and effective driving licence and that as per Ex.B-1, the seating capacity permitted is only up to 12 passengers including the driver. As per Exs.A-1 and A-2, at the time of accident, 19 passengers were traveling in the offending vehicle, which is utter violation of Ex.B-2.

12. A perusal of Ex.B-1 goes to show that seating capacity of temp tax is 12. A perusal of the counter goes to suggest that no specific plea is taken before the Tribunal that because the crime vehicle was overloaded, the driver lost control over the vehicle and that overloading is the route cause for the accident. In the absence of any such plea in the counter before the Tribunal, any amount of evidence adduced by insurance company through R.W.1, is inadmissible. This fact was considered by the Tribunal at paragraph No.10 of the award, wherein it is observed that as per Ex.A-2 charge sheet there were nineteen passengers in the tempo at the time of accident. The Tribunal also found that to substantiate the contention of the 2nd respondent/insurance company that accident was due to overloading, they have not chosen to examine the driver of the tempo trax and that the plea was taken by the insurance company basing on the averments in Ex.A-2 charge sheet. The overloading noted in Ex.A-2 is not the cause for the accident.

13. In the facts and circumstances noted above, in the absence of a specific plea in the counter that overloading of the tempo was the cause for the accident, any amount of evidence of R.W.1 to that effect, is inadmissible and cannot be looked into. Having considered the evidence of P.W.1, coupled with Exs.A-1 and A-2, the Tribunal rightly came to the conclusion that overloading is not the cause of accident.

14. The further contention of the appellant is that granting Rs.50,000/- towards loss of future earnings is erroneous.

15. A perusal of the award goes to suggest that the Tribunal at paragraph No.17 under the heading 'Compensation for loss of future earnings', discussed and found that though the claimant suffered fractures, severe head injury and attack to the left hemi-paresis, did not choose to prove disability and percentage including the nature of disability. Therefore, there is no other go, except to record

the finding that the claimant is not entitled for any amount under the head 'loss of future earnings' and accordingly no amount was awarded under this head.

16. At paragraph No.18 under the heading 'Compensation for discomfort and inconvenience', the Tribunal found that claimant sustained severe head injury due to which fits can occur and that due to the injury sustained and due to left paralysis (parts of left half of the body), as is evident from the evidence of P.W.2 doctor, the claimant cannot perform normal work. The Tribunal also considered the evidence of the doctor P.W.2 in the cross-examination that stem injury sustained by the claimant is persisting with the left hemi-paresis, which is permanent in nature. Due to said injury, there is any amount of discomfort and inconvenience for the claimant to enjoy the life or work as a normal human being. Therefore, the Tribunal awarded an amount of Rs.50,000/- towards compensation for discomfort and inconvenience.

17. At paragraph No.19, at item No.6, the Tribunal recorded compensation for loss of future earnings at Rs.50,000/-, which is awarded towards compensation for discomfort and inconvenience. 'Loss of future earnings', is typed by mistake instead of 'compensation for discomfort and inconvenience'.

18. Therefore, I find that no amount is awarded towards loss of future earnings. Hence, there is no substance in the contention of the appellant that the Tribunal granted Rs.50,000/- towards loss of future earnings.

19. The further contention of the appellant / insurance company is that the Tribunal erred in granting Rs.50,000/- towards medical expenditure.

20. P.W.1 is the injured/claimant. P.W.2 is the doctor. The evidence of P.W.1 is corroborated by the evidence of P.W.2 doctor and supported with Ex.A-3 medical certificate, Exs.A-4 and A-6 discharge summaries, Ex.A-8 investigation reports and Ex.A-9 X-ray films. This evidence on record, prove that claimant

sustained severe head injury, bimalleolar fracture of left ankle, fracture of spinous processes and due to the injury, there is swelling with left hemi-paresis, which are grievous in nature. Except suggesting to P.W.1 that the injuries received were only simple as per Ex.A-2, nothing substantial is elicited from P.Ws.1 and 2 to reject their testimony. Further, the evidence of P.W.2 goes to prove that due to severe brain injury, claimant may get fits and the hemi-paresis attack, which is a permanent one.

21. Claimant, as per Ex.A-4, was admitted in Kamineni Hospital, L.B.Nagar, Hyderabad on 21.07.2004 and underwent surgery of left ankle, took treatment for other injuries, including head injury and was discharged on 14.08.2004. Again as per Ex.A-6, the claimant was admitted in hospital on 24.8.2004 and discharged on 27.08.2004. As per Exs.A-4 and A-6, the claimant took treatment as inpatient for about 30 days. Considering nature of injuries sustained by the claimant and treatment in Kamineni Hospital, the claimant required bed rest at least for two months and thus he was subjected to severe pain and suffering due to the injuries.

22. Exs.A-5 and A-6 medical bills issued by Kamineni Hospital, would show that the claimant incurred an amount of Rs.68,717/-. The said amount includes Rs.12,000/- towards charges of special room and Rs.6,750/- towards charges of post operative ward. The Tribunal having considered the amount of Rs.6,750/- and again a sum of Rs.7,500/- mentioned in Ex.A-5, which are claimed under the heads of 'post operative ward', held that the claimant is not entitled to the amount of Rs.18,000/- and awarded only an amount of Rs.50,000/- against the bills under Exs.A-5 and A-6. The amount is just and reasonable and does not warrant any interference.

23. In the facts of the case discussed above and findings thereof, I am of the considered view that the Tribunal having considered the evidence, both oral and documentary, and by discussing elaborately, awarded compensation of

Rs.1,49,000/- and made both the insurer and the insured, jointly and severally liable.

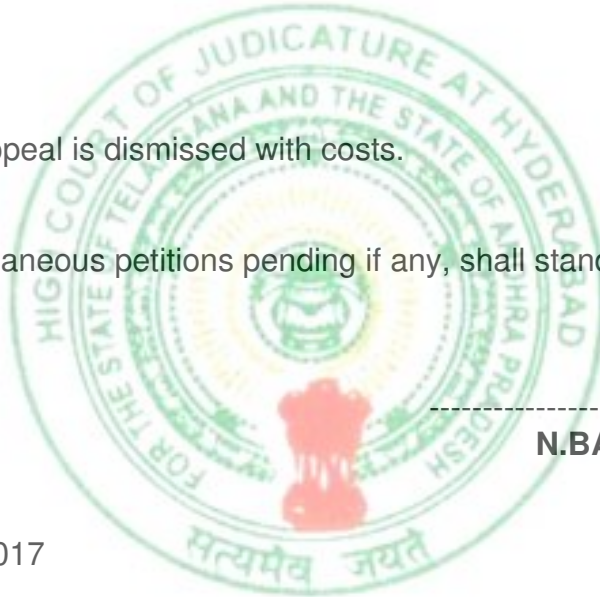
24. I do not find any irregularity or illegality in the award. The appellant failed to establish any legal infirmity warranting interference.

25. In the result, the appeal is dismissed, while confirming the award and decree dated 5.10.2007 in O.P.No.3055/2004 on the file of XVI Additional Chief Judge cum II Additional Metropolitan Sessions Judge at Hyderabad.

26. The appellant is directed to deposit the compensation amount within thirty days from the date of receipt of a copy of this order, adjusting the amount if any, already paid. The 1st respondent / claimant is permitted to withdraw the same.

27. The appeal is dismissed with costs.

28. Miscellaneous petitions pending if any, shall stand closed.



N.BALAYOGI,J

DATE:01—11—2017

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