

THE HON'BLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No.300 OF 2011

JUDGMENT:

The appellant/the New India Assurance Company Limited, aggrieved by the Award and decree, dated 15.04.2008, passed in O.P.No.520 of 2005 by the learned II Additional Metropolitan Sessions Judge, FAC/XVII Additional Chief Judge – cum – III Additional Metropolitan Sessions Judge, Hyderabad, awarding compensation of Rs.2,43,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation against the appellant/Insurance Company and respondent No.2 herein jointly and severally and further directing them to deposit the awarded compensation within one month from the date of order, preferred this appeal.

2. The claim of respondent No.1/claimant is that on the intervening night of 28/29.11.2004, at about 1:00 A.M., while he was proceeding on his Motor Cycle bearing No.AP 11 J 0631 and when reached Sanghi Road, Hayathnagar, a Truck bearing No.AP 11 W 7778 (offending truck) driven by its driver in a rash and negligent manner, came behind and hit the motor cycle as a result, he fell down and sustained grievous injuries with Grade III B composite fractures shaft left femur, U-M/3 with closed un-displaced fracture lateral condyle left femur with closed dis-placed and compound fracture left patella with closed incomplete fracture medial condyle right femur. Immediately, he was shifted to Yashoda Hospital, Malakpet and treatment was taken as inpatient No.87195 and underwent two major surgeries

and was discharged on 12.02.2004. He sustained permanent partial disability due to deformity in functioning and movement of both his legs. He incurred an expenditure of more than Rs.1,20,000/- for treatment, but filed medical bills only for Rs.99,955/-.

3. The appellant/respondent No.2 filed counter-affidavit and contended that the driver of the offending truck as well as the claimant do not have valid, effective and subsisting valid license at the time of the accident; that at the time of accident, the claimant was in an intoxication condition and that the amount claim is excessive, imaginary and out of all propositions.

4. The Court below, having considered the pleadings of both the parties and on hearing, framed the following issues for trial:

- “1. Whether the accident on 28/29-11-2004 at about 1.00 a.m. was due to rash and negligent driving of Truck bearing No.AP 11 7778 by its driver causing permanent disability to the petitioner?***
- 2. Whether the petitioner is entitled to compensation, if so to what amount and from which of the respondents? and***
- 3. To what relief?”***

5. On behalf of respondent No.1/claimant, P.Ws.1 to 4 were examined and Exs.A-1 to A-8 were marked. On behalf of the appellant/respondent No.2, R.W.1 was examined and Exs.B-1 and B-2 were marked.

6. Now the point that arises for determination is:-

“Whether the Award and decree, dated 15.04.2008, passed in O.P.No.520 of 2005 by the learned II Additional Metropolitan Sessions Judge, FAC/XVII Additional Chief Judge – cum – III Additional Metropolitan Sessions Judge, Hyderabad suffers from any infirmities and the same is liable to be set aside?”

7. **POINT:-** Learned Standing Counsel for the appellant/respondent No.2 contended that the claimant has no subsisting permanent license to drive the motor cycle as on the date of the accident; that the Court below erred in assessing the monthly income of the claimant as Rs.5,500/- and that the Court below failed to see that no charge sheet was filed by the police as there was no accident by the driver of the truck (offending truck) and the case was closed.

8. Learned counsel for respondent No.1/claimant contended that the Court below, having considered rightly, came to the conclusion that the accident in question occurred solely due to the rash and negligent driving of the driver of Truck bearing No.AP 11 W 7778 (offending truck), however, basing on the evidence of P.W.1, took the monthly income of the claimant at Rs.5,500/- per month even though actually, the salary of the driver is Rs.6,000/- as per the settled law and that there is nothing warranting interference of this Court with the impugned Award and decree.

9. It is the evidence of P.W.1 that on the intervening night of 28/29.11.2004, at about 1:00 A.M., while he was proceeding on his Motor Cycle bearing registration No.AP 11 J 6031 and when he reached near Sanghi Road, Hayathnagar, the Truck bearing No.AP 11 W 7778 (offending truck) came in a high speed and drove in rash and negligent manner and dashed the motor cycle from behind. Ex.A-1 is the certified copy of the F.I.R., which was presented at 15:00 hours on 29.11.2004, whereas the accident occurred on the intervening night of 28/29.11.2004 at 1:00 A.M.

There is no scope for manipulation or fabrication of the F.I.R. involving the Truck bearing No.AP 11 W 7778 (offending truck).

10. Ex.A-2 is the Discharge Summary wherein it is specifically mentioned that the claimant met with a road traffic accident on 29.11.2004 at about 1:30 A.M. near Hayathnagar. The complaint was lodged by one Roshan Singh, colleague of P.W.1, wherein he clearly averred that the accident occurred due to the rash and negligent driving of the driver of the Truck bearing No.AP 11 W 7778 (offending truck). Immediately after the accident, P.W.1 was taken to Yashoda Hospital where he was admitted at 1:30 A.M. on 29.11.2004 i.e., within half an hour. In the Discharge Summary, at the column "History of present illness", it is noted as under:

"Alleged to have met with an RTA on 29-11-2004 at 1:30 am near Hayathnagar and sustained above injuries."

In the F.I.R., the truck number was clearly asserted. The evidence of P.W.1 supported by Exs.A-1 and A-2 would establish that the accident in question occurred solely due to the rash and negligent driving of the driver of Truck bearing No.AP 11 W 7778 (offending truck) and involvement of the said truck.

11. Admittedly, charge sheet in this case was not filed. In **Abidunnisa Begum and another vs. Md.Asimuddin** (unreported decision in C.M.A.No.1637 of 2002 of this Court passed on 29.03.2006), this Court held that either acquittal in a criminal case or non-filing of charge sheet or dropping of the criminal proceedings will have no bearing on claim petition as they both stand on a different footing.

12. The Court below, having considered the said decision, came to the conclusion that even otherwise the appellant/contesting respondent No.2 failed to prove the alleged referring of the criminal case in Crime No.561 of 2004 of Hayathnagar Police Station as false for the reason that R.W.1, the own witness of the appellant/respondent No.2, is not the Investigating Officer. R.W.1, during cross examination, clearly stated that he was not aware whether original of Ex.B-1 – carbon copy of final report in Crime No.561 of 2004 of Hayathnagar Police Station was in fact filed before the concerned Court after issuing notice, as required under law, for referring the case as false. The Court below also found and it is a fact that on the top of Ex.B-1, the crime number was noted as “561/2005” whereas Ex.A-1 – F.I.R. was filed in “Crime No.561 of 2004”. Even the concerned Investigating Officer is not examined. No explanation came forward from the evidence of R.W.1 as to how respondent No.2, who filed Ex.B-1 report, could able to get it. Even it is not the evidence of R.W.1 that they secured Ex.B-1 copy from the concerned police. Viewing from any angle, the case of appellant/respondent No.2 that there was no accident and the offending truck was falsely implicated has no substance in view of the subsisting corroborative evidence of P.W.1 and Exs.A-1 and A-2. In the absence of any such rebuttal evidence and in view of the decision relied upon supra, I am of the considered view that the evidence of P.W.1 supported by Exs.A-1 and A-2 and the admissions during cross examination of R.W.1 well establish that the accident occurred involving the Truck bearing No.AP 11 W 7778 (offending truck) and that the accident was due to the rash and negligent driving of the driver of the said

offending truck. Such finding is legal and it does not suffer from any legal infirmities warranting interference of this Court.

13. The evidence of P.W.1 is supported by P.W.2 – Dr. Aravind Kumar, Orthopaedic Surgeon, who deposed that he was an Orthopaedic Surgeon in Yashoda Hospital. The evidence of P.W.2 supported by Ex.A-2 – Discharge Summary clearly establishes that P.W.1 was admitted in the hospital under the care and treatment of P.W.2 on 29.11.2004. The claimant sustained Grade III B composite fracture shaft left femur, U-M/3 with closed undisplaced fracture lateral condyl left femur with closed displaced composite fracture left patella with closed incomplete fracture medial condyl right femur and he was discharged on 12.12.2004. According to the evidence of P.W.2, P.W.1 required one more operation for removal of the implants, which may cost about Rs.20,000/-. Ex.A-2 – discharge summary and also the bunch of medical bills under Ex.A-3 are confronted to P.W.2 and he stated that the medicines purchased under Ex.A-3 are prescribed by him as well as other doctors who attended P.W.1. The only suggestion to P.W.2 that Ex.A-2 was created and P.W.1 can drive as usual even after the accident was denied.

14. Therefore, the consistent corroborative evidence of P.Ws.1 and 2 supported by Exs.A-1 and A-2 suggest that P.W.1 was admitted in Yashoda Hospital on 29.11.2004 and undergone surgery in the Yashoda Hospital and took treatment as inpatient from 29.11.2004 to 12.12.2004. The Court below, considering the nature of the injuries, the evidence of P.Ws.1 and 2 and Exs.A-2 and A-3, came to the conclusion that the claimant sustained

fractures of both legs and subjected to surgeries including sutures and facial lacerations and requires bed rest atleast for a period of six months including period of treatment as an inpatient and during the period of treatment as in patient and bed rest, he must have subjected to severe pain and suffering and awarded Rs.50,000/- towards pain and suffering, which do not suffer from any legal infirmity.

15. With regard to medical bills under Exs.A-3 and A-4, there is the evidence of P.W.3 – Manager in Billing Section of Yashoda Hospital. He corroborated with the evidence of P.Ws.1 and 2. Thus, it is clearly established that P.W.1 incurred more than Rs.1,20,000/- but he preserved the bills under Ex.A-3 receipts worth Rs.99,955/- only. Ex.A-3 disclose the bunch of 34 medical bills amounting to Rs.99,955/- and Ex.A-4 is the bunch of Ambulance charges bills (four in number) for Rs.800/-. Even though P.Ws.1 to 3 were cross examined at length, the appellant/Insurance Company could not elicit any favourable material to discard the evidence of P.Ws.1 to 3 or Exs.A-3 and A-4. The Court below, taking into consideration the genuineness of Exs.A-3 and A-4 and the reliable trustworthy evidence of P.Ws.1 to 3, awarded Rs.1,00,000/- towards medical expenses, which is legal and valid, and do not suffer from any legal infirmities.

16. Besides that, the Tribunal awarded Rs.5,000/- towards extra nourishment and another Rs.5,000/- towards incidental charges including conveyance from the residence to hospital and from hospital to the residence and towards attendant charges,

another Rs.33,000/- towards loss of past earnings during the period of treatment and bed rest by taking into consideration the evidence of P.Ws.1 and 4 and Exs.A-5 and A-6, showing P.W.1 drawing a salary of Rs.5,500/- per month. Besides the amount awarded, an amount of Rs.50,000/- was also awarded towards compensation for discomfort and inconvenience caused to the claimant due to the injuries sustained in the accident.

17. Further contention of the learned Standing Counsel for the appellant is that the Court below erred in assessing the income of the claimant as Rs.5,500/- as a driver. In respect of the same, there is evidence of P.W.1 wherein he clearly deposed that he was working as a driver of heavy goods vehicle under respondent No.1 for a monthly salary of Rs.5,500/- and due to the injuries sustained, he is unable to drive heavy goods vehicle and as such, his services were terminated with effect from 31.12.2004. In the cross examination, he stated that he attended the Court as pillion rider on the motor cycle of his advocate and stated that he obtained Exs.A-5 to A-7 from his ex-employer.

18. P.W.4 is the Managing Partner of respondent No.1 company whose evidence is that the claimant/P.W.1 was paid Rs.3,500/- while working as Light Motor Vehicle driver and Rs.5,500/- while working as Heavy Motor Vehicle driver and confessed that he had issued Exs.A-5 to A-7. During cross examination, P.W.4 clearly stated that their company is maintaining records including the particulars of employees. There are 3,000 employees in their company including all the branches all over India. The

suggestions that in collusion with P.W.1, he fabricated Exs.A-5 to A-7 and that he was not paying Rs.5,500/- as salary, were denied.

19. In **Minu Rout & Another vs. Satya Pradyumna Mohapatra & Others** (unreported decision of the Apex Court in Civil Appeal No.7368 of 2013), the Apex Court held at para No.13 as follows:

“..... The Tribunal ought to have taken the salary of the deceased driver at Rs.6,000/- by taking judicial notice of the fact that the post of a driver is a skilled job. Though the claim of the appellants is Rs.5000/- as monthly salary of the deceased for the purpose of determining the loss of dependency, the actual entitlement of the salary of the deceased should have been taken at Rs.6000/- per month by the Tribunal for awarding just and reasonable compensation, which is the statutory duty of the Tribunal and the Appellate Court.....”

In the case on hand, from the beginning, it is the case of the claimant that as a driver, he was earning Rs.5,500/- per month. P.W.4, the manager of respondent No.1 company, entered into box and deposed that the claimant was paid Rs.3,500/- while working as Light Motor Vehicle Driver and Rs.5,500/- while working as Heavy Motor Vehicle Driver. From the evidence on record, mainly P.Ws.1 and 4, and Exs.A-5 to A-7 and the very plea of the claimant that he was earning Rs.5,500/- per month, it can be assessed that the income of the claimant was Rs.5,500/- per month. The appeal is preferred by the Insurance Company but not the claimant. Therefore, the findings of the Court below in assessing the income of the claimant as Rs.5,500/- per month and accordingly, awarding the amount towards loss of earnings are legally valid and do not warrant any interference of this Court.

20. In the facts and circumstances discussed above, I am of the considered view that the findings of the Court below that the accident occurred due to the rash and negligent driving of the driver of Truck bearing No.AP 11 W 7778 (offending truck) on 28/29.11.2004 do not warrant any interference of this Court. Mere non-filing of charge sheet or dropping of the criminal proceedings will have no bearing on the claim of the claimant. The Tribunal rightly accepted the plead and evidence of P.Ws.1 and 4 and Exs.A-5 to A-7 and came to the right conclusion that the monthly income of P.W.1 was Rs.5,500/- per month and accordingly, awarded compensation on different heads legally and in accordance with the settled principles of law. In view of the same, the impugned order does not suffer from any legal infirmities. The appeal is devoid of merit and is liable to be dismissed with costs.

21. In the result, the appeal is dismissed with costs confirming the Award and decree, dated 15.04.2008, passed in O.P.No.520 of 2005 by the learned II Additional Metropolitan Sessions Judge, FAC/XVII Additional Chief Judge - cum - III Additional Metropolitan Sessions Judge, Hyderabad.

22. The appellant/Insurance Company is directed to deposit the compensation as directed by the Tribunal within a period of 30 days from the date of receipt of a copy of this order after adjusting the amount if any already paid/deposited.

23. On such deposit or if the compensation amount is already kept in any Nationalized Bank under fixed deposit as directed by the Tribunal, respondent No.1/claimant is permitted to withdraw

the amount by filing an appropriate application before the Tribunal.

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

25. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

JUSTICE N. BALAYOGI

Date : 01.08.2018
AMD



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