

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.1325 OF 2011

JUDGMENT:

Appellant-injured-claimant filed this appeal against the order and decree dated 08.12.2010 passed in M.V.O.P.No.187 of 2009 by the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Visakhapatnam, granting compensation of Rs.70,000/- as against the claim of Rs.3,00,000/- for the injuries sustained by her in the accident occurred on 01.01.2008.

The appellant filed claim petition under Section 166 of the Motor Vehicles Act alleging that on 01.01.2008 after visiting Prema Hospital, Visakhapatnam, she boarded the auto bearing No.AP 31 TT 6695 belonging to the second respondent herein to go to Tagarapuvalasa. The driver of the auto had driven the auto in a rash and negligent manner ignoring the cautions given by the appellant. When the auto reached near Rajula Thallavalasa at about 6.30 p.m. the driver lost control over the auto, due to which, the auto turned turtle and fell on the appellant, resulting in fracture to her left ankle and other injuries. Immediately, she was shifted to Swamy Naidu Hospital, Visakahapatnam, and later she was taken to Kala Hospital, Visakhapatnam, where she underwent operation for her fracture and rods were inserted. Bheemili Police registered a case in crime No.6 of 2008 for the offence punishable under Section 338 of Indian Penal Code against the driver of the auto. Due to fracture she was unable to stand for long time, walk long distance and unable to squat properly. Further, due to accident, she lost her studies and future income. Hence, she claimed compensation of Rs.3 lakhs payable by the respondents jointly and severally.

First and second respondents remained *ex parte*.

Third respondent-Insurance Company filed a counter affidavit denying the averments of the claim petition and specifically stating that the driver of the auto was holding LMV non-transport license, the auto in question was a passenger carrying commercial auto for which specific endorsement is required to enable the driver to ply the same and as such they are not liable to pay compensation. Hence, prayed for dismissal of the claim petition.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the petitioner sustained injuries in the motor accident occurred due to the rash and negligent driving of the vehicle i.e., Auto bearing No.AP 31 TT 6695 driven by its driver?
- 2) Whether the petitioner is entitled to compensation? If so, to what amount and from which of the respondents?
- 3) To what relief?

On behalf of the appellant, PWs 1 to 4 were examined and Exs.A.1 to A.10 were got marked besides Exs.X.1 to X.4. On behalf of the respondents, RWs 1 and 2 were examined and Exs.B.1 and B.2 were got marked.

Based on the evidence of P.W.1 and Exs.A.1 to A.4, the Tribunal came to the conclusion that the accident was occurred due to the rash and negligent driving of the offending vehicle in which the appellant sustained injuries and thereby the Tribunal answered the issue in favour of the appellant. The Tribunal based on the evidence of PW.2-Doctor and Exs.A.7 to A.10 and Exs.X.1 and X.2, granted Rs.25,000/- towards pain and suffering, Rs.5,000/- towards medical and other incidental expenses a sum of Rs.40,000/-, in total Rs.70,000/- towards compensation along

with interest @ 6% per annum fixing the liability on respondents 1 and 2 by exonerating the third respondent from the liability.

Sri Jayanti S.C.Sekhar, learned counsel for the appellant, would contend that the Tribunal has not properly considered the medical bills submitted amounting to Rs.15,000/- as per Ex.A.8; the Tribunal grossly erred in disbelieving the disability certificate under Ex.A.9 issued by P.W.2; the Tribunal failed to see that the driver of the offending vehicle was having LMV Transport license and it is a valid driving license to drive the auto, in view of the judgment of the Hon'ble Supreme Court in ***Mukund Dewangan vs. Oriental Insurance Company Limited***¹.

Per contra, Sri T.Mahender Rao, learned counsel appearing for the third respondent, would contend that the Tribunal on consideration of the evidence before it has rightly granted Rs.70,000/- as total compensation along with interest @ 6% per annum and rightly disbelieved the disability certificate under Ex.A.9 issued by P.W.2 in the absence of evidence establishing the procedure followed to assess the disability of 30% and the same could not be find fault with. The Insurance Company is not liable to pay the compensation as the accident occurred due to rash and negligent driving of the driver of the offending vehicle, who is not having valid driving license, and LMV Transport license is not a valid license to drive the auto, which is a passenger auto. Hence, the appeal for enhancement of the compensation is misconceived and liable to be dismissed.

Sri Venkat Reddy, leaned counsel appearing for the second respondent, would contend that the owner of the offending vehicle is not liable to pay the compensation as the driver of the offending

¹ 2017 ACJ 2011

vehicle is having valid driving license to drive the offending vehicle i.e. auto. Since the offending vehicle is insured with third respondent, the Insurance Company alone is liable to pay compensation.

Having heard the learned counsel for the parties and considered the evidence available on record, this Court finds that the Tribunal has rightly answered issue No.1 in favour of the appellant and came to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the offending auto i.e. R.1. The said finding could not be found fault with in the absence of any contrary evidence adduced by the respondents.

In ***Mukund Dewangan (1 supra)*** the Hon'ble Supreme Court held that holder of LMV driving licence is not required to obtain separate endorsement to drive transport vehicle of light motor vehicle class. Hence, the first respondent, who was the holder of the LMV Transport license, is authorized to drive the offending vehicle i.e. auto. In that view of the matter, fixing the liability on respondents 1 and 2 alone absolving respondent No.3 from the liability is illegal and contrary to the judgement of the Hon'ble Supreme Court in ***Mukund Dewangan (1 supra)***.

The Tribunal considering the evidence of PWs 2 and 3 and Exs.A.7 to A.10 and Exs.X.1 and X.2 has granted Rs.25,000/- towards pain and suffering, Rs.5,000/- towards medical expenses and other incidental charges Rs.40,000/- and in total granted Rs.70,000/-. The Tribunal grossly erred in disbelieving Ex.A-9 disability certificate issued by P.W.3 showing that the claimant suffered 30% disability, on the ground that the doctor has not deposed the procedure followed in assessing the disability.

On perusal of the evidence on record, P.W.2-Dr.R.Kumaraswamy, Medical Officer, I Town, SVMC, Visakhapatnam, deposed that the claimant suffered fracture of Malluloar of left ankle of both bones, he performed operation on 09.01.2008, fixed 'K' wires and she was discharged on 11.01.2008. Later, she was admitted in Aarif Hospital, Visakhapatnam, on 18.05.2009 for removal of 'K' wire and removal of 'K' wire and he attended on her and removed 'K' wires. P.W.3-Dr.A.Gopikrishna, Consultant Orthopaedic Surgeon, Sanjivini Hospital, Visakhapatnam, who examined the claimant on 12.06.2010, issued Ex.A-9 Disability Certificate assessing the disability at 30% partial and permanent. According to him, the petitioner was not able to walk properly. The same is supported by the evidence of P.W.4 and Ex.X-2. She could be suffered with bleak marriage prospects.

The Tribunal failed to independently assess the partial and permanent disability of the claimant, based on the evidence on record, and it simply eschewed the evidence on record, not decided the loss of future earnings of the claimant. Hence, this Court comes to the conclusion that on over all appreciation of the evidence, disability of 25% could be assessed and thereon loss of future earning capacity could be assessed as 20%.

Further, in view of the judgment of the Hon'ble Supreme Court in ***B.Ramulamma vs. Venkatesh Bus Union, Lingarajapuram, Bangalore and another***², the probable income of the claimant could be taken as Rs.5,000/- per month as she was pursuing her B.Ed. course at the time of accident, as evident from Ex.A-6. The multiplier of '18' should be applied as the

² 2011 ACJ 1702 (AP)

injured was aged 18 years at the time of accident, as per the judgment of the Hon'ble Apex Court in ***Sarla Verma vs. Delhi Transport Corporation***³. The loss of future earnings could be arrived at Rs.2,16,000/- (Rs.5000 X 12 X 18 X 20/100). That apart, the petitioner is entitled for Rs.70,000/- towards pain & suffering, medical and other incidental expenses, as granted by the Tribunal based on the evidence available on record. Thus, in all, the appellant is entitled for the total compensation of Rs.2,86,000/-.

Accordingly, the appeal is allowed in part enhancing the compensation amount awarded by the Tribunal of Rs.70,000/- to Rs.2,86,000/- along with proportionate costs and interest @ 6% per annum from the date of petition till the date of realization. The respondents shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with proportionate costs and interest, after deducting the amounts if any already deposited, payable by the respondents jointly and severally within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellant-claimant is at liberty to withdraw the same.

Accordingly, the appeal is allowed.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

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³ 2009 (6) SCC 121