

THE HON'BLE MS. JUSTICE J. UMA DEVI

M.A.CMA.No.464 OF 2010

JUDGMENT:

Against the award, dated 29.02.2008, passed in M.V.O.P.No.969 of 2006 on the file of Chairman, Motor Accident Claims Tribunal - cum - X Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, the present appeal is filed by the United India Insurance Company Limited, which has been arrayed as respondent No.2 in the above mentioned O.P.

2. The factual background of the case is briefly stated as under:

3. Respondent No.1 herein laid a claim for Rs.2,00,000/- against the owner of lorry bearing No.AP-28-U-5929 and the insurer of the said lorry, having received injuries in the accident, dated 14.12.2005, which according to him was caused due to the negligent driving of the above mentioned lorry by its driver. The owner of the lorry has not contested the claim petition and it was only the appellant viz., the United India Insurance Company Limited contested the case filed by respondent No.1.

4. The case of respondent No.1, as narrated in his claim petition, was, that on 14.12.2005 at about 08:45 PM, while he was proceeding on Bajaj Chetak scooter bearing No.AP-28-F-4225 from Bhuvangiri to Naginenipally along with two other persons viz., R. Janga Reddy and Roshi Reddy, the scooter was being driven with great care and

caution on the left side of the road by following traffic rules. While he was proceeding so, when they reached the outskirts of Mailaram Village, a lorry bearing No.AP-28-U-5929 driven by its driver in a rash and negligent manner at high speed came in their opposite direction and dashed the scooter. Due to the said impact, respondent No.1 and his two friends fell down from the scooter and received grievous injuries. Immediately after the accident, respondent No.1 was shifted to ARDM hospital and there he was admitted for the purpose of treatment. Police of Bommaramaram Police Station registered a case in Crime No.68 of 2005 under Sections 337 and 338 I.P.C. against the driver of the offending lorry. Since respondent No.1 received grievous injuries in the accident, dated 14.12.2005, due to the negligent driving of the offending lorry by its driver, he laid the claim for Rs.2,00,000/- against the owner and insurer of the offending lorry.

5. Respondent No.1, having asserted that the accident, dated 14.12.2005, which resulted in grievous injuries to him, was caused by the driver of the offending lorry, got examined himself as PW.1 in proof of his aforementioned assertion. He also relied on Exs.A1 to A3, which were the certified copies of F.I.R. in Crime No.68 of 2005 of Bommaramaram Police Station; charge sheet in the above crime, and the MLC Report.

6. The Tribunal, on close scrutiny of the evidence of PW.1 and the documents filed by him, came to the opinion that the accident, dated 14.12.2005, was caused due to the negligent driving of the lorry bearing No.AP-28-U-5929 by its driver and that respondent No.1 received injuries in the said accident.

7. The contention of the appellant was that the driver of the offending lorry was not responsible for causing the accident, dated 14.12.2005, in which respondent No.1 is said to be received fracture injuries to the right leg and right fore-arm and there was head on collision between both the vehicles. The plea of 'head on collision' between the lorry and scooter was not taken by the appellant in his counter. The appellant, for the first time i.e., at the stage of filing of the appeal against the award of the Tribunal had taken the stand that the rider of the scooter also contributed for the accident and that the tribunal had erroneously awarded compensation as against the owner of the offending lorry and the appellant herein, and made them liable to pay compensation jointly and severally. It was also contended by the appellant in the appeal grounds that in the claim petition, respondent No.1 asserted that while himself and his two friends were proceeding on scooter bearing No.AP-28-F-4225, the accident in question took place. As travelling of three persons on a two wheeler was not permitted by rules, the Tribunal ought to have held that the rider of the scooter also contributed for the occurrence

of the accident and apportioned the negligence as against the rider of the scooter and driver of the lorry.

8. The appellant – Insurance Company in its counter took the plea of contributory negligence on the part of the rider of the scooter. Similarly, no plea was raised by it that due to travelling of three persons on Bajaj Chetak Scooter the accident occurred. The appellant – Insurance Company had not adduced any oral evidence for establishing the contributory negligence on the part of rider of the scooter. It also failed to establish that rider of the scooter himself dashed the scooter to the lorry by driving it in a rash and negligent manner. Evidently, no ocular evidence was placed on record by the Insurance Company, except the production of copy of the Insurance Policy of the offending lorry, disproving the evidence of PW.1.

9. The learned Tribunal relying on the evidence of PW.1 (respondent No.1 herein), who received injuries in the accident, dated 14.12.2005, and the documents he produced in support of his oral testimony, observed that the driver of the offending lorry was responsible for causing of the accident, dated 14.12.2005, and the accident so caused resulted in injuries to respondent No.1 and to his friends.

10. It might be true that in the petition averments it was pleaded by respondent No.1 that while himself and his two friends were

proceeding towards Naginenipally from Bhuvangiri, the accident in question took place.

11. The appellant without placing any evidence on record disproving the evidence of PW.1 pleaded for the first time in the appeal grounds that there was contributory negligence on the part of rider of the scooter also (1st respondent herein). In the absence of evidence in regard to the negligent driving of the scooter by its rider, it would be difficult to hold that the rider of the scooter also contributed for the accident. The plea of contributory negligence was not raised in the counter. The Tribunal on a close scrutiny of the evidence of PW.2, whose evidence was corroborated in all respects with the contents of Exs.A3 to A10, arrived to a correct conclusion that the accident, dated 14.12.2005, which resulted in bone injuries to respondent No.1 to his right leg and right fore arm, occurred due to the negligent driving of the offending lorry, which dashed the scooter by coming on its opposite direction in a rash and negligent manner.

12. It is contended by the appellant that though no document is produced by respondent No.1 establishing his income through cultivation, the Tribunal has assessed his income at Rs.3,000/- per month and the assessment so made by the Tribunal is contrary to the evidence on record. It is also contended by the appellant that the

Tribunal has granted compensation of Rs.97,183/- under the head of medical expenditure, without any basis.

13. Since the appellant has come up with the plea that the compensation awarded to respondent No.1 by the Tribunal is on higher side, and that no proper reasoning is given by the Tribunal for awarding compensation of Rs.1,89,383/-, the evidence given by PWs.1 and 2 needs to be re-appreciated.

14. Respondent No.1 produced Ex.A3 - certified copy of MLC Report to prove that in the accident, dated 14.12.2005, he received fracture injury to right leg. As per Ex.A3, respondent No.1 received Grade I compound fracture to both bones of right leg, and a fracture injury to ulna of right fore arm. In Ex.A4 - discharge summary, it was recited that respondent No.1 received bone injury to right leg. The appellant did not choose to adduce any evidence rebutting the oral testimony of PW.1, where he narrated the number of injuries received by him in the accident, dated 14.12.2005. The appellant has not made any attempt to disprove Exs.A3 and A4.

15. As it was evident from the contents of very Ex.A3 that respondent No.1 received fracture to right fore arm and right leg and he took treatment for the said injuries under the care and supervision of PW.2, Dr. Durga Prasad, the Tribunal awarded Rs.10,000/- in respect of the fracture injury received by him to his right leg. Since, the petitioner also appears to have received a simple

injury, the Tribunal awarded Rs.2,000/- towards the simple injury. The Tribunal also awarded Rs.5,000/- towards pain and suffering. Thus, an amount of Rs.17,000/- was awarded by the Tribunal in respect of the grievous and simple injuries received by respondent No.1 in the road accident.

16. The Tribunal relied on Exs.A3 to A9, where the particulars of the treatment given to respondent No.1 were mentioned and also the medicines prescribed. Placing reliance on the above mentioned documents, it assessed the medical expenditure reasonably at Rs.97,183/-. The Tribunal placing reliance on the portion of the evidence of PW.2 as to the inconvenience and discomfort which respondent No.1 was having due to receiving of fracture injury to right leg assessed the disability at 15%, though in fact it was sworn by PW.2 that PW.1 is having disability at 30%.

17. The appellant admittedly did not make any attempt to disprove the testimony of PW.1 that he was getting income through cultivation. The Tribunal on assessing the income of respondent No.1 through cultivation at Rs.3,000/- per month roughly, applying multiplier '13', as the age of respondent No.1 is 50 years on the date of accident, assessed the loss of income at Rs.70,200/-.

18. The Tribunal taking into consideration the fact that respondent No.1 was compelled to take bed rest on account of the fracture injuries he received to both bones of his right leg and right

fore arm, assessed the loss of income during the period of his hospitalisation at Rs.3,000/-.

19. In my view, the award passed by the Tribunal granting compensation of Rs.1,89,383/- to respondent No.1 under various heads, such as compensation towards pain and suffering, medical expenditure, disability, loss of income due to disability, loss of past earnings, extra nourishment and transportation, needs no intervention. The amount of compensation awarded to respondent No.1, in my view, is fair and reasonable.

20. In the light of my aforesaid discussion, the award under challenge deserves to be confirmed.

21. In the result, the appeal is dismissed confirming the award, dated 29.02.2008, passed in M.V.O.P.No.969 of 2006 on the file of Chairman, Motor Accident Claims Tribunal - cum - X Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad.

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

July 24, 2018.
MD

J. UMA DEVI, J