

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.1748 OF 2010

JUDGMENT:

Against the award, dated 19.08.2010 passed in M.V.O.P.No.1122 of 2009 by the Motor Vehicle Accident Claims Tribunal-cum-IX Addl. District Judge (FTC), Guntur, the present appeal is filed by Kongala Pratyagatma @ Atma Rao, claimant in the aforementioned O.P. raising the two contentions that the contributory negligence on his part at 50 percent has been assessed wrongly by the Court below, and that the amount of compensation awarded to him is very minimal and low.

2. The facts which led the claimant to file the present appeal are briefly stated as under:

The claimant in the abovementioned O.P. has filed the claim petition under Section 163-A of the M.V. Act seeking a decree for compensation of Rs.1,00,000/- as against the respondents herein in respect of the injuries received by him in a road accident occurred on 04.09.2009 at about 2.15 P.M.,, while he was proceeding by walk on the road margin near Nagarjuna University on N.H.5 road due to hit by Car bearing No. AP 20Q 9399 which came from Vijayawada side in a rash and negligent manner. His contention was that he was provided with treatment in NRI hospital for the injuries he received in the accident. In the

aforementioned accident, he received multiple abrasions over right fore head, lacerated injury over right cheek, abrasion over mentum, abrasions over posterior aspect of right elbow, abrasion over right wrist, abrasion over right knee, abrasion over left knee and abrasion over lateral aspect of right foot. After his shifting to NRI hospital for treatment, X ray was taken and on verification of X ray, the doctor noticed fracture injury to spine. As the driver of the Car bearing No. AP 20Q 9399 was responsible for the occurrence of the accident, he laid the claim for compensation of Rs.1,00,000/- against the respondents 1 and 2 who were the owner and insurer of the said vehicle.

3. The case filed by the petitioner was contested by Reliance General Insurance Company Ltd., with whom the offending car was insured. The Insurance Company also sought permission of the Court to take all defences available to the 1st respondent who was the owner of the vehicle. The 2nd respondent-Insurance Company took all defences available to it including denial of accident.

4. The petitioner to prove his case, examined himself as P.W.1 and marked Exs.A1 to A8. He also examined Dr.M.Rama Mohan Rao as P.W.2, under whose care and supervision, he took treatment in NRI hospital.

5. The Court below on appreciation of oral and documentary evidence available in the case record, held that the petitioner also contributed for the occurrence of the accident and accordingly, apportioned negligence on the part of the petitioner and driver of the offending car in the ratio of 50:50 percent and granted compensation of Rs.31,050/- and stated that the petitioner is entitled to get 50 percent of the awarded compensation amount from the respondents as there is contributory negligence on his part.

6. The contentions raised by the appellant challenging the award are two fold. His first and foremost contention is that he filed the application under Section 163-A of the M.V. Act, where the determination of negligence does not arise. The Court below wrongly held that he contributed for the occurrence of the accident, discarding his oral testimony that while he was proceeding by walk on the road margin, he was hit by the offending vehicle driven by its driver in a rash and negligent manner. As per his contentions, though he is not supposed to establish negligence on the part of the driver of the offending vehicle as the application under Section 163-A of the M.V. Act, the Court below has dealt his case as if it is filed under Section 166 of the M.V. Act. As the involvement of the crime vehicle in the accident is established by him, the Court below ought

not to have given a finding due to whose negligence, the accident took place etc., The second contention of the appellant is that the evidence given by P.W.2, as to attainment of disability of 20 percent by him due to the injury he received to spinal, has not been appreciated in a proper perspective.

7. I have gone through the award under challenge and also the evidence on record.

8. As it is contended by the appellant that he has filed the claim petition under Section 163-A of the M.V. Act, this Court has verified the pleadings of the petitioner. The petitioner seems to have laid the claim for compensation under Section 163-A of the M.V. Act, where negligence on the part of the driver of the offending vehicle need not be proved. To claim compensation under Section 163-A of the M.V. Act, establishment of involvement of a vehicle is enough.

9. The contention of the petitioner is that while he was proceeding by walk on the road margin near Nagarjuna University on N.H.5 road, a Car bearing No. AP 20Q 9399 came from Vijayawada side and hit him and as the result of it, he received several injuries. The Investigating agency registered a case against the driver of the car bearing No. AP 20Q 9399 and laid the charge sheet against him.

10. The discussion made by the Court below in sub-para 2 of para 8 of the award indicates that the case filed by the petitioner under Section 163-A of the Act is dealt as if it is filed under Section 166 of the M.V. Act where the negligence on the part of the driver of the crime vehicle needs to be established.

11. In the instant case, the claim petition is filed under Section 163-A of the M.V. Act, where establishment of negligence on the part of the driver of the crime vehicle not required, and it is suffice if the involvement of the vehicle in the accident is proved. The petitioner by examining himself and by producing Exs.A1 to A3, which are the certified copy of FIR in Cr.No.205 of 2009 of Mangalagiri Police Station, certified copy of charge sheet filed in crime under Ex.A1 and certified copy of wound certificate of petitioner issued by NRI General Hospital, has proved the involvement of the Car bearing No. AP 20Q 9399 in the accident.

12. The approach adopted by the Court below to deal with the case filed by the petitioner under Section 163-A of the M.V. Act is against to law. Since the petitioner is able to establish the involvement of the Car bearing No. AP 20Q 9399, the apportionment of negligence on the part of the petitioner and the driver of the crime vehicle in the ratio of

50:50 percent cannot be held as correct. Since the involvement of the crime vehicle is established by the petitioner, the Court below ought to have held the respondents 1 and 2 are liable to pay compensation to the petitioner jointly and severally as it is not denied by the 2nd respondent that the crime vehicle has got valid and subsisting insurance policy with R2 as on the date of the accident.

13. Coming to the contention raised by the petitioner as to the quantification of compensation is concerned, it is evident from the oral testimony of P.W.1 and from Ex.A3-wound certificate issued by NRI hospital that he has taken treatment for multiple abrasions over right fore head, lacerated injury over right cheek, abrasion over mentum, abrasions over posterior aspect of right elbow, abrasion over right wrist, abrasion over right knee, abrasion over left knee and abrasion over lateral aspect of right foot. Ex.X1-case sheet and Ex.A3-wound certificate do not indicate that the petitioner received bone injury to spine. The learned trial Judge has entertained a doubt as to the assessment of disability by P.W.2 in respect of injury to spine as Exs.X1 and A3 do not indicate that the petitioner received bone injury. But, one thing is clear from the contents of Exs.X1 and A3 that the petitioner received 7 abrasions and a

lacerated wound and for such injuries, he took treatment as an inpatient in NRI hospital for a period of 5 days. In such circumstances, the Court below ought to have awarded reasonable sum towards compensation under the head of pain and suffering As the amount of Rs.16,000/- awarded to the petitioner under the head of pain and suffering in respect of seven abrasions and lacerated wound appears to be low, the same is enhanced to Rs.25,000/- from Rs.16,000/-.

14. It is observed by the Court below in sub para 8 of para 9 that for the injury received by the petitioner to knee, he took treatment as an inpatient for a period of 5 days and taking of complete bed rest for a period of one month for such injury would be sufficient. The Court below having come to such opinion ought to have awarded reasonable sum towards compensation under the head of extra nourishment and attendant charges. As it appears that no amount is awarded by the Court below under the head of extra nourishment and attendant charges, this Court hereby awards a sum of Rs.3,000/- under the said heads.

15. The Court below awarded a sum of Rs.1050/- under the head of loss of earnings taking note of the fact that the petitioner was forced to take bed rest for one month due to the injury received by him to knee. Though the petitioner could prove that he took treatment as an

inpatient for a period of 5 days in NRUI hospital by exhibiting Ex.X1-case sheet and substantial amount was spent towards treatment and medical expenditure, only a sum of Rs.12,000/- was awarded under the head of medical expenditure and treatment. As the amount of Rs.12,000/- awarded under the head of medical expenditure, hospital charges appears to be low, the same is enhanced to Rs.20,000/-.

16. The Tribunal taking note of the fact that the injured/petitioner was immediately taken to NRI hospital for treatment from the place of accident has awarded rightly Rs.2,000/- under the head of transportation charges.

17. In the light of the discussions held above, the award passed by the Court below is partially modified and the details of the amounts he gets under various heads are as indicated below:

1.Compensation towards pain and suffering	Rs.25,000/-
2.Compensation towards medical expenditure and treatment	Rs.20,000/-
3.Compensation under the head of extranourishment and attendant charges	Rs.3,000/-
4.Transportation charges	Rs.2,000/-
5.Loss of past earnings.	Rs.1,050/-

Total	Rs.51,050/-

18. The petitioner is thus entitled to get compensation of Rs.51,050/- and the same is made to a round figure of Rs.50,000/- as against Rs.31,050/-, and that the entire compensation of Rs.50,000/- is payable to him by the respondents 1 and 2 together with interest at 7.5% p.a., from the date of the petition till the date of realization in the light of my dissenting view as to apportionment of negligence on the part of the petitioner and the driver of the crime vehicle.

19. The appeal filed by the petitioner against the award in O.P.No.1122 of 2009 on the file of the Motor Accident Claims Tribunal-cum-IX Addl. District Judge (FTC) Guntur, deserves to be allowed in part in the light of my aforementioned discussion and the same is hereby allowed in part. But, there shall be no order as to costs.

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

J.UMA DEVI, J

DATED: 21-08-2018.

Hsd