

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON' BLE SMT.JUSTICE T.RAJANI

MACMA No.2575 OF 2008

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

Challenging the judgment and award dated 22.04.2008, passed in M.V.O.P.No.209 of 2004 on the file of the IV Additional Sessions Judge, Tirupati, the claimant preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act").

2. The claimant/ petitioner filed an application under Section 166(1)(a) of the Act claiming compensation of Rs.15,00,000/- for the injuries suffered by her in a road accident that occurred on 29.08.2003 at about 08.30 a.m. It is stated that on that day, while the petitioner was traveling in a car bearing TN 09 AB 2874, a lorry bearing Reg.No.TNH 9025, which came in opposite direction, dashed against the said car near Kanakavallipuram of Chennai – Tiruttani Highway. Immediately, thereafter, the injured/ claimant was shifted to General Hospital, Tiruvalluru for first aid and then to Sri Ramachandra Medical College hospital, Chennai, for further treatment. It is stated that the first respondent is the owner of the lorry and second respondent is the insurer. It is stated that the first respondent insured the vehicle in the name of the third respondent. Hence, all the respondents are jointly and severally liable to pay compensation to the petitioner. The first and third respondents remained *ex-parte* and failed to contest the proceedings. The second respondent filed written statement denying the averments made in the petition. The respondent denied the mode of accident, age, income and occupation of the petitioner. The second respondent also denied its liability on the ground that the claim of compensation is excessive and exorbitant; that the petitioner is not having

any permanent disability as she sustained only simple injuries and that the there was no valid license for the petitioner to drive such vehicle. Hence, the petition is liable to be dismissed.

Basing on the above pleadings, following issues were framed:

1. "Whether the petitioner sustained injuries in a motor vehicle accident occurred on 29.08.2003 at about 08.30 a.m., due to rash and negligent driving of the driver of lorry bearing Regn.No.TNH 9025 belonging to the first respondent insured with second respondent?
2. Whether the petitioner is entitled for compensation as prayed for in the petition?
3. To what relief?"

During the course of enquiry, the injured examined PWs.1 to 6 and got filed Exs.A1 to A25. On behalf of the second respondent, no oral evidence was adduced but a copy of insurance policy was adduced as Ex.B1 and Exs.X1 to X2 (X-Rays) were marked for the respondent. After analyzing the evidence available on record, the Tribunal held that the accident took place due to rash and negligent driving of the lorry driver, due to which the petitioner received injuries. After considering the evidence on record, the Tribunal awarded a sum of Rs.4,33,922/- with interest @7.5%per annum from the date of petition till the date of payment. Challenging the said award, the claimant preferred the present appeal.

3. The finding of the tribunal with regard to the manner in which the accident took place has become final. Further, it is to be noted that no appeal has been filed challenging the manner in which the accident took place. Therefore, the finding of the trial Court that the accident took place due to rash and negligent driving by the driver of the lorry, bearing No.TNH 9025, stands unrebutted.

4. The only point that arises for consideration is whether the compensation awarded by the tribunal for injuries sustained is reasonable?

5. The main ground urged by the learned counsel for the appellant is that the Tribunal erred in awarding only Rs.4,33,922/- towards the claim of Rs.15 lakhs. He took us through the evidence of witness and also the document filed to show that the Tribunal awarded less than what the claimant is entitled to.

6. On the other hand, learned counsel for the respondents would contend that the finding of the Tribunal is based on the evidence available on record and hence the same requires no interference.

7. In order to appreciate the same, it would be useful to refer to the evidence on record, namely, as to whether the claimant is entitled to the relief claimed by him.

8. The fact that the petitioner is aged about 52 years at the time of accident is not in dispute.

9. With regard to the income of the appellant, in the claim petition, it has been stated that the petitioner was earning Rs.20,000/- and that she is Director of Sri Ramadevi Multi Specialty Super Hospital, Tirupati. In her chief affidavit, PW1 stated that she is the owner of Sri Ramadevi Multi Speciality Super Hospital, Tirupati and that she owns house properties etc., that after the accident she is unable to look after the hospital personally. She filed A18 to A25 evidencing particulars of the properties. However, in the cross examination she admits that from the date of her marriage, she never cultivated lands personally. She further admits that even after the accident, she has been receiving rents from the tenants of the buildings. However, to a suggestion that she is not getting Rs.20,000/- per month was

denied by her. It is to be noted that she did not disclose any account books maintained by the hospital nor the IT returns to show that she was earning Rs.20,000/- . Merely showing that she is the Director of the hospital may not be sufficient.

10. Having regard to the above, the Tribunal fixed the income of the appellant as Rs.3,000/-, by treating her as house wife. We feel that Rs.3,000/- per month fixed by the Tribunal by treating her as house wife may not be correct for the reason that even a daily wage woman labourer is earning more than Rs.3,000/- per month.

11. Having regard to the facts in issue and in the absence of evidence though claimed as a Director of the Hospital, we feel that it would be just and proper to fix the monthly income of the claimant at Rs.4,500/- per month. Even if it is to be considered that she was working as Director, still due to disability with which she has sustained, she must have engaged an attendant to take care of her for day to day household work. Viewed from any angle, we feel that monthly income of the injured can be enhanced from Rs.3000/- to Rs.4,500/-.

12. Regarding disability, the learned counsel for the appellant tried to contend that the Tribunal erred in fixing the permanent disability at 20% He contends that when the certificate issued by PW3 would show that the claimant sustained 50% permanent disability, but there is no material on record to show how the said 20% disability was arrived by the Tribunal.

It is to be noted here that Ex.A10 disability certificate came to be shown after filing of the O.P. It is no doubt true that the appellant underwent surgeries in different hospitals, but it is to be noted that the petitioner nowhere stated about her permanent disability because of the injuries received by her in the accident.

In view of the above, we feel that the Tribunal rightly fixed disability at 20%

13. Further, in view of the judgment of the Apex Court in *Sarla Verma Vs. Delhi Transport Corporation*¹, the suitable multiplier for calculating loss of earnings in case of person who is aged about 50 years would be '11'.

14. Hence loss of earnings would be Rs.4,500/-x12x11x20%~~=~~ Rs.1,18,800/-

15. The petitioner claims compensation of Rs.1,00,000/- towards pain and suffering. It is stated that after accident, the petitioner took treatment at Sri Ramachandra Medical College Hospital, Chennai, where PW6 Orthopedic Surgeon treated the petitioner and also performed operation. Ex.A2 is the wound certificate enclosed, which discloses that the petitioner received two grievous injuries. Ex.A12 is the discharge summary issued by Sri Ramachandra Medical College, Chennai. The said certificate shows that she took treatment in the hospital as inpatient from 29.08.2003 to 10.09.2003. The record also shows that the petitioner took treatment at MIOT Hospital, Chennai and also at Balaji Hospital, Hindupur.

Having regard to the above, we feel that a sum of Rs.20,000/- awarded towards pain and suffering appears to be lower side. Hence, the same is enhanced to Rs.35,000/- instead of 20,000/-.

16. Coming to the claim of Rs.1,00,000/- towards extra diet and attendant charges, the material available on record clearly indicates that after the accident, the petitioner was admitted as in-patient in Sri Ramachandra Medical College Hospital, Chennai. PW6 Orthopedic Surgeon, attached to the said hospital, in his evidence, deposed that the appellant underwent

¹ 2009 ACJ 1298

operation for fracture of right femur. According to him, the petitioner must have spent atleast Rs.10,000/- towards extra diet. The claimant is said to have filed bunch of bills for Rs.40,000/- towards attendant charges. PW2 who was employed by the claimant, deposed that she worked as attendant of the PW1 from 2003 on monthly salary of Rs.2,000/- and Ex.A1 are the receipts issued by her. But, however, though the evidence on record would show that the petitioner spent a considerable amount towards attendant charges, the Tribunal awarded a sum of Rs.20,000/- towards extra nourishment and attendant charges, which in our view requires to be enhanced to Rs.50,000/-, in view of the documentary evidence placed on record.

17. Coming to the claim for medical expenses, the appellant placed on record Ex.A4, A16 and the evidence of PW6 to show that she has incurred expenditure of Rs.5 lakhs. But, however, the Tribunal awarded only sum of Rs.2,03,674/- for medical expenses incurred at Sri Ramachandra Medical College Hospital, Chennai. Further, basing on the evidence of PW5, the Tribunal awarded a sum of Rs.1,01,048/- for the treatment taken at MIOT Hospital, Chennai. Further, the learned Sessions Judge disbelieved the claim of Rs.1,01,506/- for the treatment and surgery which the petitioner underwent at Balaji Hospital, Hindupur. It is to be noted that PW4 is the Doctor, who treated the petitioner at Balaji Hospital, Hindupur. Ex.A15 is the discharge bill summary showing amount charged by him. The said evidence of PW4 was disbelieved by the learned Judge stating that there is no need for the appellant to come over to Hindupur, when facilities are available at Tirupati. It may be true that facilities are available at Tirupati, but at the same time, it is to be noted that she also took treatment at Chennai, though facilities are available at Tirupati, and for her convenience, she must have taken treatment at Hindupur. Hence, we feel that there is

no justification for the Tribunal to disbelieve the evidence of PW4, when the same is supported by the evidence. Hence, the claim of Rs.1,01,506/- for her expenses incurred in Balaji Hospital, Hindupur, shall be considered. But, as stated above, for the expenses incurred by the petitioner in MIOT Hospital, Chennai and Sri Ramachandra Medical College, Chennai, the Sessions Judge considered the claim towards expenses for medicines and treatment for a sum of Rs.3,04,722/-(total expenses incurred in Sri Ramachandra Medical College Hospital, Chennai and MIOT Hospital, Chennai,) which warrants no interference by this Court and the amount of Rs.1,01,506/- which the petitioner incurred at Balaji Hospital, Hindupur shall also be included under the said head and the total medical expenses incurred would be Rs.3,04,722/- + Rs.1,01,506/- that comes to Rs.4,06,228/-.

18. Coming to the claim towards transport charges, claim is of Rs.50,000/. It is no doubt true that the petitioner is the owner of the car, she has filed Ex.A7- transport bills, issued by Sai Travels, Tirupati, to show that she was shifted from the place of accident to Chennai and thereafter to MIOT Hospital, Chennai. Though transport bills – Ex.A7 show expenses incurred at Rs.21,260/-, the Tribunal strangely awarded a sum of Rs.10,000/- for which there is no basis. Infact, no reason is given as to why sum of Rs.10,000/- only was awarded, when the claim was for Rs.21,260/-. Had there been some reason for awarding Rs.10,000/-, we could have accepted the same. But in the absence of the same, we feel that the claim of the appellant towards transport charges to the extent of Rs.21,260/- made by the appellant through Ex.A7 needs to be accepted.

19. Coming to loss of amenities, the Tribunal did not go into that aspect.

Taking into consideration the fact that she was in-patient in hospital for number of days and was dependant on PW2 and also others, even for

attending day to day activities, during the said period, we feel a sum of Rs.20,000/- can be accepted towards loss of amenities.

20. Hence, the petitioner is entitled for the following amounts:

Loss of earnings due to disability (4500x12x11x20%):	Rs. 1,18,800/-
Pain and suffering:	Rs. 35,000/-
Extra nourishment & attendant charges:	Rs. 50,000/-
Medicines and treatment (Rs.2,03,674/- +Rs.1,01,048/- + Rs.1,01,506/-):	Rs. 4,06,228/-
Transport charges:	Rs. 21,260/-
Loss of amenities:	<u>Rs. 20,000/-</u>
	<u>Rs. 6,51,288/-</u>

21. Thus, the petitioner is totally entitled to Rs.6,51,288/- as against Rs.4,33,922/- granted by the Tribunal, however, with interest at the rate of 7.5%per annum, from the date of petition till realization.

22. Accordingly, the appeal is allowed in part. There shall be no order as to costs.

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

C. PRAVEEN KUMAR, J

T. RAJANI, J

19.07.2018

vhb