

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No. 1942 of 2011

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

1) Challenging the award and decree dated 19.01.2011, passed in O.P.No.1292 of 2007 on the file of the XXI Additional Chief Judge-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, the IFFCO – TOKIO General Insurance Company Limited (hereinafter referred to as “insurance company”), preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short “the Act”).

2) The facts in issue are as under:

The 1<sup>st</sup> respondent herein (hereinafter referred to as “the injured”) filed O.P.No.1292 of 2007, claiming compensation of Rs.45,00,000/- for the injuries sustained by him in a road accident, which occurred on 05.01.2006. It is stated that on that day at about 3.30 a.m., while he was supervising the road divider work at L.V.Prasad Eye Institute, Banjara Hills, Hyderabad, a Qualis Vehicle bearing No. AP 9 Z 9277 driven by its driver in a rash and negligent manner came and dashed against him. Due to which, he sustained multiple fractures on both the legs and both the legs getting crushed into pieces, apart from other injuries all over the body. In respect of the above incident, the police registered a case in

Crime No.12 of 2006 against the driver of the vehicle. Immediately after the accident, the injured was shifted to NIMS Hospital where he underwent several operations on different occasions and an amount of Rs.2,50,000/- was spent towards medical expenses. It is stated that due to severe crush of bones and flesh, the bones upto knee were reduced to several pieces, which could not be united inspite of best efforts and treatment. It is said that the claimant is not in a position to bear the weight of the body on his legs that he is totally immobilize. According to the injured, he was earning Rs.12,500/- per month as an electrical engineer in M/s. V.K.R.Projects Private Limited, Hyderabad and due to the injuries, he was removed from service. Since the accident took place due to rash and negligent driving of the driver of the vehicle and as the said vehicle was insured with the appellant herein both of them are made jointly and severally liable to pay the compensation.

- 3) The owner of the vehicle remained exparte.
- 4) The insurance company filed their counter denying the manner in which the accident took place and also the age, income and avocation of the claimant. It is specifically stated that the 1<sup>st</sup> respondent has not sustained permanent disability as pleaded. It is also contended that the insurance company is not liable to pay any compensation, as the accident occurred due to negligence of the driver. In any event it is pleaded that the amount awarded is highly excessive.

5) Basing on the above pleadings, the Tribunal framed the following issues:

- i) Whether the petitioner sustained injuries in the accident on 5-1-2006 due to rash and negligent driving of driver of the vehicle bearing No.AP-9X-9277?
- ii) Whether the petitioner is entitled to any compensation? If so, from whom?
- iii) To what relief.

6) In support of his plea, the injured examined PWs.1 to 7 and also got marked Exs.A1 to A25. On behalf of the insurance company, no oral evidence has been adduced but Ex.X1-Certificate of Incorporation came to be marked.

7) After analyzing the oral and documentary evidence available on record, the trial Court held that the accident took place due to the rash and negligent driving by the driver of the Qualis vehicle and accordingly awarded a sum of Rs.31,00,000/- as compensation with interest at 7.5%p.a. from the date of petition till the date of realization. Challenging the same the insurance company filed the present appeal.

8) The main ground urged by the learned counsel for the appellant is that the trial Court erred in awarding medical expenses to an extent of Rs.3.00 lakhs, when the evidence of PW.3 show that he was compensated by his employer to the said extent.

9) Learned counsel appearing for the injured would submit that the trial Court erred in awarding only a sum of Rs.25,00,000/- in lumpsum towards loss of future earnings and permanent disability, by taking the annual income of the injured at Rs.12,500/- per month.

10) Coming to the medical expenses, though the petitioner filed medical bills worth Rs.3,30,789/- the trial Court awarded a sum of Rs.3,00,000/- towards medical expenses. It is to be noted that PW.3 in his cross-examination, admits that the company bore all the medical expenses of the injured in relation to the accident. In the re-examination, he states that the company paid the medical expenses on humanitarian grounds. Further, in the chief examination itself, the injured who got himself examined as PW.1, stated that an amount of Rs.40,000/- was paid by the Government under C.M. Relief Fund. In view of the admission made by PW.3 that the company bore all the medical expenses of the injured in relation to the accident and the admission made by the injured that the Government paid Rs.40,000/- under C.M. Relief fund, the amount of Rs.3,00,000/- awarded by the trial Court towards medical expenses appears to be incorrect. Having regard to the above, we feel that the injured is not entitled to any amount under the head "medical expenses".

11) It is to be noted that the trial Court awarded lumpsum amount of Rs.25,00,000/- towards loss of future earnings and permanent disability by fixing the salary of the injured at

Rs.12,500/- per month. PW.3, who is said to be the Managing Director of M/s V.K.R. Projects Private Limited, in his evidence deposed that the injured was an employee of his constructions company and his company used to pay Rs.12,500/- per month towards salary. In the cross-examination he admits that they were paying a salary of Rs.40,000/- to one Madhava Reddy, who worked along with the injured at the time of the accident. He further admits that he has not filed any material to show that the injured worked in their company after the accident. However, no salary particulars of the injured were filed. But PW.3 in his evidence admits that the company issued Ex.A19 terminating the services of the injured with effect from 31.03.2007. PW.4, who is the Assistant Professor in Plastic Surgery at NIMS Hospital, Hyderabad, stated that there is a shortening of both the legs and the movements of knees and ankles are restricted. He also stated that the injured cannot sit and stand on foot and that the injured cannot do his job in view of bilateral injuries and deformity.

12) Admittedly, the injured was taken as 29 years at the time of the accident, in view of Ex.P17-the Secondary School Certificate, where his date of birth was mentioned as 27.05.1977. As stated earlier, PW.4 in his evidence clearly deposed that the injured has become totally disabled and he cannot do his job in view of bilateral injuries and deformity. Taking into consideration the educational qualifications of the injured and as the services of injured were terminated, the trial Court fixed the income of the

injured at Rs.12,500/- . In view of the judgment of the Apex Court in *National Insurance Co. Ltd., vs. Pranaysethi and others*<sup>1</sup> 40% to the income of the injured towards future prospects, where there was a fixed salary and the age was below 40 years, should be added for calculating the loss in income/ earnings. Further, in view of the ratio laid down in *Sarla Verma v. Delhi Transport Corporation*<sup>2</sup> the suitable multiplier to be adopted for calculating the loss of earnings would be '17'. Taking the salary of the injured at Rs.12,500/-, loss of future earnings on account of his disability would be around Rs.12,500/- + 5,000/- (40%future prospects) x 12 x 17 = Rs.35,70,000/- . Though it is an appeal filed by the insurance company but still the Court can alter the findings in favour of the claimant and award compensation which shall not be more than the amount awarded by the trial Court, in view of the judgment of the Apex Court in *Ranjana Prakash and others v. Divisional Manager, New India Assurance Co. Ltd., and another*<sup>3</sup> wherein it is held as under:

“The High Court cannot obviously increase the compensation in an appeal by owner/insurer reducing the compensation, nor can it reduce the compensation in an appeal by claimants seeking enhancement of compensation.”

13) In *The National Insurance Company Limited Vs. Mohd.Zakeer and others*<sup>4</sup>, this Court also dealt with a situation as

---

<sup>1</sup> (2017) ACJ 2700

<sup>2</sup> (2009) 6 SCC 121

<sup>3</sup> (2011) ACJ 2418

<sup>4</sup> Manu/AP/0240/2014

to whether there could be an enhancement of compensation in the appeal filed by the Insurance Company. Relying upon the Judgment of Apex Court in *Ranjana Prakash* (3 supra), this Court held as under:

“In *Aitipamula Kalavathi @ Kamma Vs. Southern Road Ways Limited and another*<sup>5</sup>, a learned single Judge of this Court relying on the decisions reported in *Oriental Insurance Company Vs. R. Swaminathan*<sup>6</sup> and *Ranjana Prakash and others Vs. Divisional Manager and another*, held that compensation amount cannot be increased beyond the amount awarded by the Tribunal in the appeal filed by the insurance company. It was held that even under Order 41 Rule 33 of C.P.C., the appellate Court cannot grant larger or higher relief than claimed. It must be mentioned here that in another decision reported in *National Insurance Company Limited, Nizamabad Vs. Saheb @ Gdivan Saheb and others*<sup>7</sup>, another learned single Judge of this Court also expressed similar view stating that prayer for enhancement of compensation cannot be accepted when the claimant has not preferred appeal challenging the adequacy of compensation.

Coming to the present case, admittedly the claimants have not preferred any appeal and on the other hand, the insurance company has only preferred the appeal questioning the quantum of compensation. In view of the above citations, compensation cannot be enhanced to more than what was awarded by the Tribunal.”

---

<sup>5</sup> 2014 (2) ALD 464

<sup>6</sup> 2006 ACJ 1398

<sup>7</sup> 2014(2) ALD 468

14) In view of the judgments referred to above; and as the injured has not preferred any appeal seeking enhancement of compensation, the appeal is dismissed confirming the quantum of compensation awarded by the tribunal. There shall be no order as to costs in the appeal. As a sequel, miscellaneous applications pending, if any, shall stand closed.

---

C.PRAVEEN KUMAR, J

---

KONGARA VIJAYA LAKSHMI, J

28.06.2018  
gkv

