

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

MACMA No.348 of 2012

ORDER:

This appeal is filed by the insurance company questioning the order dated 30.08.2007 in MVOP No.1248 of 2002 passed by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-District Judge, Guntur.

The petitioner, who is a B.Tech engineering student, got injured in an accident that occurred on 02.05.2002 when he was crossing the road. A tractor and trailer belong to the first respondent being driven by its driver at high speed and in a rash and negligent manner dashed against him. The wheels of the trailer ran over his waist, resulting in multiple fractures to his vertebrae, pelvis and other parts. Therefore, he filed MVOP to claim compensation of Rs.8,80,000/- for the injuries sustained by him.

The first respondent is the owner of the tractor and trailer. The second respondent is the insurer. For the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.11 were marked. For the respondents, RWs.1 and 2 were examined and Exs.B.1 to B.3 were marked. The Tribunal ultimately awarded compensation of Rs.8,80,000/- as claimed in the MVOP and held that the

respondents are liable to pay the said compensation amount jointly and severally. Questioning the said order, the present appeal is filed by the insurance company.

This Court has heard Smt. Jonna Ramani, learned counsel for the appellant/insurance company and Sri N. Subba Rao, learned counsel for the first respondent/petitioner.

The learned counsel for the appellant/insurance company argued that the Tribunal awarded an exorbitant amount without considering the facts and circumstances of the case. She points out that the award of compensation is not based on the correct assessment of the facts and the law on the subject. She questioned the manner in which the monthly income was assessed. She also questioned the fact that a sum of Rs.50,000/- was awarded under Head-E and a further sum of Rs.50,000/- was awarded under Head-F also. She relied upon Section 4 of the Motor Vehicles Act, 1988 and contended that as the driver of the tractor and trailer had a fake licence, there is a contravention of the Section 4 of M.V. Act and that the insurance company is therefore not liable to pay the compensation whatsoever.

In reply thereto, the learned counsel for the respondent/petitioner submitted that the injured was a

young man aged about 17 years at the time of accident and that he was an engineering student. It is his contention that as the wheels of the trailer ran over the waist of the petitioner, he is totally paralyzed waist down and that the disability is 100%. He points out that the Tribunal came to a conclusion that the petitioner is actually entitled to the higher compensation of Rs.10,22,114/-, but in view of the fact that he only claimed Rs.8,80,000/-, the Tribunal awarded the said amount only. He also contended that the assessment of damages is correct and as per the law. He also points out that as per the judgment in **Sarla Verma v. DTC**¹, the multiplier has to be taken only as '18', but the Tribunal applied the multiplier of '17'. In addition, the learned counsel also points out that the judgment reported in **National Insurance Co. Ltd. v. Swaran Singh**², which was relied upon by the Tribunal is a complete answer to be the ground of fake licence raised by the learned counsel for the appellant. Therefore, he again relied on the said judgment and prays that the appeal should be dismissed.

This Court after hearing both the learned counsel notices some fundamental facts.

¹ (2009) 6 SCC 121

² 2004 ACJ 1

- a) that the petitioner/injured was a student of B.tech engineering and was aged 17 years at the time of accident;
- b) that the accident resulted in 100% disability, as noticed by the Tribunal. There is paralysis of the entire lower limbs of the petitioner.

In these circumstances, the question that arises for consideration is whether the assessment of damages is wrong or not?

The Tribunal took into consideration the fact that the petitioner (but for the accident) would have completed his B. Tech. engineering course by then and would have joined in a profitable employment. The Tribunal came to a conclusion that even a daily wage earner earns Rs.2,000/- to Rs.3,000/- per month. The learned counsel for the respondent/petitioner is right in pointing out that the petitioner must have definitely earned not less than Rs.3,000/- per month and this is the least amount, one can expect an engineer to earn.

Therefore, this Court finds substantial strength in the contention of the learned counsel for the respondent/petitioner that the actual income assessed by the

Tribunal based on the monthly income of Rs.3,000/- is not at all exorbitant.

The Tribunal also noticed that there is 100% disability for the young man aged about 17 years at the time of accident. Hence, in the opinion of this Court the multiplier-17 from the schedule-II of the Motor Vehicles Act has been adopted rightly and the income has been correctly computed. For the pain and suffering, a sum of Rs.25,000/- only was given, although there is a complete loss of mobility. With regard to medical expenses, the Tribunal looked into Ex.A.6-medical bills issued by the Apollo Hospitals and came to a conclusion that a sum of Rs.2,60,114/- was awarded towards past medical expenses. The expenses were supported by the evidence of RW.2-an officer of the insurance company. In addition, the Tribunal awarded Rs.25,000/- towards future medical expenses. Admittedly, due to the alleged accident, the injured is totally paralyzed. Therefore, the award of Rs.25,000/- as future medical expenses for his entire life span is not exorbitant in the opinion of this Court.

Similarly, as the petitioner is paralyzed, he will also require one attendant, transport charges and extra nourishment charges and hence, the Tribunal awarded

the amount of Rs.50,000/- under this head. Therefore, granting of Rs.50,000/- under this head by the Tribunal is not exorbitant. Under the last head, a sum of Rs.50,000/- was awarded by the Tribunal towards lost chance of marriage. This point is based on the case law on the subject. In the opinion of this Court, a person, who sustained serious injury with 100% disability and is paralysed, will have lost the chance of getting married.

Therefore for all these reasons, this Court is of the opinion that the assessment not faulty, erroneous or exorbitant. As the claim of the petitioner is Rs.8,80,000/-, the actually awarded amount is restricted to the claimed amount only. Therefore, there is no mistake committed by the Tribunal in the opinion of this Court.

As far as the second aspect that is raised by the learned counsel for the appellant/insurance company it is about the fake driving licence. This aspect was also considered by the Tribunal. Exs.B.1 to B.3 were marked and two witnesses-RWs.1 & 2 were also examined by the insurance company. The Tribunal further noticed that the owner of the vehicle acted in good faith. He believed that the driving licence possessed by the driver was genuine and entrusted the vehicle to him to drive. The

learned counsel also rightly pointed out that in **Swaran Singh's** case (2 supra), the Hon'ble Supreme Court of India held that the mere fact that there is fake or invalid driving licence is not a defence available to the insurance company to avoid the payment of compensation. This aspect was also dealt with by the Tribunal in page-9 of the impugned order, wherein the Tribunal clearly held that the insurance company has to pay at the first instance and then to recover the awarded amount from the owner of the vehicle.

In that view of the matter, this Court finds that absolutely there are no grounds to interfere with the impugned order.

The appeal is therefore dismissed. The order dated 30.08.2007 in MVOP No.1248 of 2002 passed by the Chairman, Motor Vehicles Accidents Claims Tribunal, Guntur is confirmed in all respects. In the circumstances of the case, there shall be no order as to costs.

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

D.V.S.S. SOMAYAJULU, J

Date: 05.11.2018
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