IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

[Special Original Jurisdiction]

FRIDAY THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND EIGHTEEN

PRESENT

HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA.No. 3231 OF 2012

Between:

P. Sai Kumari ... appellant

V/s.

B. Srinivasulu Reddy & Anr. ... Respondents

Counsel for the appellant : Sri K. Rathangapani Reddy

Counsel for the Respondents : Sri Gadi Ramachandra REddy

The court made the following: [Judgment follows]

HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA.No. 3231 OF 2012

JUDGMENT :

This Civil Miscellaneous Appeal is arising out of the order and decree dated 16/07/2012 passed in MVOP.No. 390 of 2008 by the Motor Accident Claims Tribunal-cum-First Additional District Judge, Kadapa.

2. The appellant is the petitioner, who has filed a claim-petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.3,00,000=00 on account of the injuries sustained by her in a motor vehicle accident. The accident occurred on 07/12/2007 in the morning hours while the appellant was going along with one S.Rashmi on a cycle near Solvent Factory, Madras Road, Kadapa. The appellant was a pillion rider on the cycle while the rider of the cycle was Rashmi. At about 05:30

p.m., while they were going on cycle, one tractor bearing No.AP-04-V-4517 came in opposite direction driven in a rash and negligent manner at a high speed and dashed to them, as a result of which the appellant sustained fracture of pubic bones, right knee, right ankle besides other injuries on all over the body. She was treated in RIMS Hospital, Kadapa, as inpatient for ten days and later taken treatment at Apollo Hospital, Hyderabad, Sri Sai Nursing Home, Kadapa and NIMS Hospital, Hyderabad. She underwent surgery and still she is unable to walk, and incurred medical expenditure of Rs.1,00,000=00. As she had suffered permanent disability, she had claimed compensation of Rs.3,00,000=00 under various heads against respondents 1 and 2, i.e., owner and insurer of tractor bearing No. AP-04-U-4517 and 4518.

3. The first respondent has filed his written statement stating that he is the owner of the crime vehicle, and the driver has got valid driving licence and that he has not driven the crime vehicle in

a rash and negligent manner, and the accident occurred due to the rash and negligent driving of the cycle by its rider. It is further stated that the crime vehicle is insured with the second respondent, therefore, the second respondent is liable to pay compensation for the third party risk. Lastly the first respondent sought for the dismissal of the claim-petition, as the claim is excessive.

4. The second respondent filed his written statement contending that as per F.I.R. one un-identified tractor, came in opposite direction and dashed to the cycle, as a result of which, the rider and the appellant sustained injuries. It is stated that as per the contents of the FIR the vehicle of the first respondent is not involved in the accident, and due to the collusion between the appellant and the first respondent, the vehicle is planted in this case. It is further stated that the first respondent handed over his tractor to his driver, who holds no valid driving license, as such the insurer is not liable to pay compensation. Therefore, the petition may be dismissed, as there is violation of the terms and conditions

of the Insurance Policy. It is further stated that there is no proof of permanent disability of the appellant and the claim of the appellant is excessive.

5. The Tribunal on consideration of the pleadings of the parties, oral evidence of PWs 1 and 2 and the documentary evidence Exs.A-1 to A-10 and the oral evidence on behalf of the respondents, RWs 1 and 2 and documentary evidence Exs. B-1 to B-5 has answered the issue No.1 holding that the accident occurred due to the rash and negligent driving of the driver of crime vehicle, i.e., tractor and trailor bearing No. AP-04U-4518 and 4517. Whereas the issue Nos. 2 and 3 are concerned, the Tribunal has held that the first respondent is only liable to pay the compensation of Rs.2,00,600=00 on account of the injuries sustained by the appellant in the said accident and dismissed the claim against the respondent No.2 Insurer.

6. Aggrieved by the award and decree passed by the Tribunal, the appellant has preferred the present appeal seeking

enhancement of compensation and also holding the second respondent is liable to pay compensation in this case.

7. The point for consideration is :

i) Whether the appellant is entitled for enhancement of compensation ?

ii) Whether the appellant is entitled for setting aside the finding of exonerating the liability against the second respondent and making liable to pay compensation ?

8. Sri Surepalli Madhava Rao, learned counsel for the appellant submitted that the Tribunal has taken the income of the appellant as Rs.3000=00 while assessing the compensation, which is very meagre. It is submitted that the appellant was a student of Intermediate and she had bright future and she would secure and may earn income of more than Rs.3000=00 per month, and therefore, the notional income of the appellant per month may be enhanced for the purpose of calculation of compensation.

9. Sri Gadi Ramachandra Reddy, the learned standing counsel for the second respondent submitted that the notional

income of the appellant being a student considered by the Tribunal does not require any interference, as it is quite reasonable.

10. On consideration of the arguments of learned counsel for the appellant as well as learned standing counsel for the second respondent, it is obvious that the appellant was aged about 19 years by the date of accident and she suffered disability of 30% in the said accident. As far as the notional income of the appellant is concerned, as she is a major aged about 19 years, her income can be taken at Rs.4,500/- per month. The Tribunal has awarded Rs.1,83,600/- basing on the income of the appellant at Rs.3000/- . On considering the income of the deceased of Rs.4,000/- per month and basing on that the same is enhanced to Rs.2,75,400/-.

11. The learned counsel for the appellant submitted that the Tribunal has exonerated the liability of the Insurer basing on the plea which was not raised by the insured in his written statement. The plea that was considered by the Tribunal during the course of evidence was with regard to the liability of the insurer basing on

the policy particulars. The learned counsel for the appellant submitted that without there being any pleading in the written statement filed by the second respondent, the Tribunal has taken into consideration the evidence of the witnesses RWs.1 and 2 on behalf of the Insurance Company and came to the conclusion that the Insurance Policy Ex.B-1 is an agricultural policy and exonerated the liability of the Insurer. It is further submitted that no amount of evidence can be taken into consideration without their being any pleading.

12. The learned standing counsel for the second respondent, Sri Gadi Ramachandra Reddy submits that there is violation of the terms and conditions of Ex.B-1 Insurance Policy, as the Insurance Policy was made for agricultural purposes but the tractor and trailor is being used for commercial purpose. It is further submitted that the Tribunal has rightly considered the evidence on record, and therefore, the liability of the Insurer may be exonerated. The learned standing counsel also submitted that if a conclusion is

reached with regard to the liability of the Insurer, the Insurer may be directed to pay the compensation in the first instance and recover the same from the owner of the crime vehicle in this case, as there is violation of the terms and conditions of Ex.B-1 Insurance policy. The law is well-settled in respect of pleadings of parties basing on which they lead evidence. No amount of evidence can be considered without there being pleadings of the parties.

13. The learned counsel for the appellant place reliance on the decision in MUKUND DEVAGAN's case [reported in 2016 (4) SCC-298] submitted that there is no violation of the terms and conditions of Ex.B-1 Insurance Policy. The driver of the tractor is having valid driving license to drive the non-transport vehicle but he has driven a transport vehicle, which is not in violation of the terms and conditions of the Insurance Policy in respect of third party, and on that ground the liability of the Insurer cannot be exonerated.

14. In the light of the facts and circumstances of this case and in view of the decisions rendered by the Hon'ble Apex Court in Ayyapan and Mukund Devagan, the liability of the Insurer cannot be exonerated. Having regard to the facts and circumstances of this case, I do not see any merits in the contentions raised by the learned standing counsel for the second respondent for exonerating the liability of the Insurer.

15. In the result, this Civil Miscellaneous Appeal is party allowed by modifying the award and decree passed by the Tribunal, enhancing the compensation from Rs.2,00,600/- to Rs.2,92,400/- with interest @ 6% per annum from the date of petition till the date of realization and the findings of the Tribunal with regard to exonerating the liability of the insurer is set aside. The second respondent-IFFCO-TOKIO General Insurance Company Limited, Banjara Hills Branch, Hyderabad is directed to deposit the balance amount of compensation within one month from the date of receipt of a copy of this judgment. On such

deposit, the appellant is directed to withdraw the amount. There shall be no order as to costs.

16. As a sequel, miscellaneous petitions if any, pending in this M.A.C.M.A., shall stand closed.

JUSTICE GUDISEVA SHYAM PRASAD.

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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16/03/2018
I s L.

HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA.No. 3231 OF 2012
JUDGMENT :
[RESULT :: APPEAL IS PARTLY ALLOWED]

Date: 16/03/2018
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