

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.271 OF 2014

JUDGMENT:

Appellant-Insurance Company filed this appeal against the order and decree dated 01.08.2013 passed in M.V.O.P.No.413 of 2009 by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Kadapa, granting compensation of Rs.17,02,000/- as against the claim of Rs.17,50,000/- to the first respondent-claimant-injured for the injuries sustained by him in the motor accident occurred on 04.02.2009.

First respondent-claimant filed claim petition under Section 166 of the Motor Vehicles Act against the second respondent and appellant alleging that on 04.02.2009 at about 7.00 p.m. while he was travelling on scooter as a pillion rider along with one Arland Sagaya Raj as the rider from Kadapa to Paidikalva, when they reached near Eguvapalli fields on Kadapa-Paidikalva road, one tractor-trailer bearing No.AP04J-2674/2673 being driven by its driver in a rash and negligent manner, without blowing horn and without dim and dip lights, dashed against the scooter on which the claimant and another were travelling, due to which, both of them fell down and received injuries. Immediately, the claimant was shifted to Rima Hospital, Kadapa. Thereafter, he took treatment in SVIMS, Tirupathi and also in APSRTC Hospital, Tarnaka, Hyderabad. From there, he was referred to Medcity, Hyderabad, where the claimant took treatment for three months and got operated. He also suffered paralysis. Thus, he claimed

compensation from respondent No.2 and appellant, who are the owner and insurer of the offending vehicle respectively.

The second respondent-owner of the offending tractor remained *ex parte* before the Tribunal.

The appellant-Insurance Company filed a counter affidavit denying the material averments of the claim petition and contending that the claim petition was bad in law for non-joinder of necessary parties i.e. owner and insurer of the scooter on which the claimant was travelling at the time of the accident. It was further stated that the claim was excessive. Hence, prayed for dismissal of the claim petition.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the claimant received injuries in a motor vehicle Accident occurred due to rash and negligent driving by the Driver of tractor bearing No.AP04.J.2674 and 2673 on 4.2.2009?
- 2) Whether the claimant is entitled for compensation, if so, to what amount and from whom?
- 3) To what relief?

On behalf of the claimant, PWs 1 to 3 were examined and Exs.A.1 to A.7 were got marked. On behalf of the appellant-Insurance Company, no oral and documentary evidence was adduced.

The Tribunal based on the evidence of PW.1-claimant and documentary evidence under Exs.A.1 to A.7 held that the accident was occurred due to rash and negligent driving of the driver of the tractor-trailer. As regards quantum of compensation, the Tribunal took the average income of the claimant as Rs.12,000/- per month

keeping in view that the injured, who was working as a Driver in APSRTC and aged 38 years, was having the left over service of more than 20 years and in future his salary will be enhanced. The Tribunal applied the multiplier '15' as the deceased was aged 38 years and belonged to the age group of 35-40 years. Further, based on Ex.A.5-Disability Certificate issued by P.W.2, the Tribunal held that the appellant sustained 70% disability. Thereby, the Tribunal awarded Rs.15,12,000/- towards permanent disability. In addition, the Tribunal has granted Rs.1,30,000/- towards medicines and treatment expenses, Rs.10,000/- towards extra nourishment and attendant charges, Rs.20,000/- towards pain and suffering, Rs.30,000/- towards loss of earnings, in total, Rs.17,02,000/- towards compensation along with proportionate costs and interest @ 6% per annum from the date of petition till the date of realization payable by respondent No.2 and appellant jointly and severally.

The learned counsel for the appellant-Insurance Company would contend that the claim petition was bad in law for non-joinder of parties; the Tribunal failed to see that there was inordinate delay of four years in obtaining Ex.A.5-Disability Certificate; the Tribunal failed to appreciate that as the claimant was made to retire from service on medical grounds, the Tribunal erred in granting compensation of Rs.17,02,000/- without deducting the monetary benefits received by him at the time of his retirement; and the compensation granted by the Tribunal is on higher side.

Per contra, learned counsel for the respondent-claimant would contend that due to the injuries received in the accident, the claimant was paralysed and as such he was made to retire from service compulsorily, thereby he lost his employment and earnings as well. Hence, the Tribunal has granted compensation keeping all these things in mind and there is no irregularity or illegality in the impugned order passed by the Tribunal. He was made retired on medical grounds, he had not put in required length of service in APSRTC to get benefits, he was paid very meagre amounts, which were paid to the creditors to clear the loans taken for treatment. Hence, the contention of the appellant that the Tribunal erred in not deducting the amounts received is untenable. The appeal is misconceived and liable to be dismissed.

Having heard the rival contentions and perused the record, this Court is of the considered view that there is no error or illegality in accepting Ex.A.5-Disability Certificate for awarding compensation by the Tribunal. Based on the evidence of P.W.2-Doctor in support of Ex.A.5, the Tribunal has taken the disability suffered by the claimant at 70%. In the absence of any contrary evidence let in by the appellant-Insurance Company, the veracity of Ex.A.5 cannot be suspected. It is an admitted fact that due to the injuries sustained by the claimant-injured in the accident in question, he sustained permanent disability and on the said ground, he was declared physically unfit by the Medical Board not only for the post of Driver but also for any other post in APSRTC, for which, he was made to retire compulsorily.

Another contention raised by the learned counsel for the appellant that the Tribunal erred in not deducting the monetary benefits received by the claimant from APSRTC on his retirement from the compensation amount awarded by the Tribunal under M.V.Act, cannot be countenanced since the compensation awarded under M.V.Act is nothing to do with the retirement benefits received by the claimant-injured. Further, in view of the clear finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the offending tractor/trailer, the contention urged by the appellant's counsel that the claim petition is bad in law for non-joinder of necessary parties i.e. owner and insurer of the scooter on which the injured and another were travelling, cannot be sustained in the absence of contributory negligence. In fact, the claimant, being a fixed wage earner, is entitled for future prospects for his life expectancy as he was paralysed. Further, the Tribunal granted less percentage of interest @ 6% per annum. The said benefits were denied by the Tribunal to the claimant. Thus, viewed from any angle, the appeal is liable to be dismissed and is accordingly dismissed.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

06.12.2018
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