

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.453 of 2011

JUDGMENT :

The appellant/claimant aggrieved by the Award and Decree dated 28.9.2010 in M.O.P. No.27 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Special Judge for trial of cases under S.Cs. & S.Ts. (PoA) Act-cum-Additional District & Sessions Judge, Vizianagaram, preferred this appeal.

2. The brief facts of the claim are as follows :-

On 10.9.2006, the claimant, being the cleaner of the jeep bearing No.AP 31 TT 2196, boarded the same at Visakhapatnam. At about 24.00 hours, when the jeep reached near Ayinada junction, they noticed a lorry coming in the opposite direction and the 1st respondent, being the driver of the jeep, applied sudden breaks, lost control and as a result, the jeep turned turtle.

3. In the said accident, the appellant/petitioner sustained fracture to his left hand. Immediately, he was shifted to Government Hospital, Vizianagaram, therefrom he was shifted to the Hospital of Dr.K.V.Rama Rao, where he took treatment for a period of one month. He suffered a lot, spent considerable amounts for treatment and deprived to do his normal work.

4. The 3rd respondent – Insurance Company filed counter and additional counter traversing the allegations in the petition and disputed the

manner of the accident, the age, income and avocation of the appellant/petitioner, the coverage of insurance policy and validity of the driving licence of the driver of the jeep at the time of the accident.

It is further contended that the offending vehicle is a goods carriage light motor vehicle and passengers are not allowed to travel in the same and as the petitioner was travelling as a passenger, which amounts to violation of terms and conditions of the policy. The 3rd respondent is not liable to indemnify the liability of the second respondent.

5. In view of the rival contentions, on hearing and consideration of the entire material on record, the Tribunal settled the following issues for trial :

1. Whether the pleaded accident was occurred resulting in injuries to the petitioner due to rash and negligent driving of the jeep bearing No. AP 31 TT 2196 by its driver R1?
2. Whether the petitioner is entitled for compensation? If so, what quantum and what is the liability of the Respondents?
3. To what relief?

In support of the appellant's case, P.Ws.1 to 4 were examined and Exs.A1 to A9 were got marked. On behalf of the 3rd respondent, R.Ws.1 and 2 were examined and Exs.B1 and B2 were got marked.

6. The Tribunal on issue No.1 held that the 3rd respondent did not place any evidence to prove that the offending vehicle was not involved in the accident. More so, the evidence of R.W.1 reveals that the police, having investigated into the crime, have filed the charge-sheet against the driver of the offending jeep bearing No.AP 31 TT 2196. The evidence of P.W.1, supported by Exs.A1 and A2, established that the accident was due to the

rash and negligence of the offending jeep to which the 1st respondent was the driver at the time of the accident. The Tribunal also find that at the time of the accident, the petitioner was working in Sai Rama Hotel at Visakhapatnam and his presence in the jeep at the time of the accident was as a passenger, accordingly, he is gratuitous passenger, so, even though Ex.B1 policy was in force at the time of the accident, the 3rd respondent is not liable to indemnify the liability of the 2nd respondent.

7. The Tribunal did not believe the medical bills under Ex.A5, but awarded Rs.30,000/- towards medicines. The Tribunal awarded Rs.10,000/- towards pain and sufferings; Rs.10,000/- towards loss of earnings and Rs.50,000/- towards compensation for loss of amenities and prospects in life and longevity in life; thus, in total the Tribunal awarded Rs.1,00,000/- to the appellant/petitioner against respondents 1 and 2 jointly and severally and the 3rd respondent – Insurance Company is absolved from its liability.

8. Now, the point that arises for determination is :-

“Whether the Award and Decree suffer from any legal infirmities warranting interference in the appeal.”

9. The contention of the appellant is that the trial Court ought to have considered Ex.A5 – medical bills, Ex.A4 – disability certificate and ought to have awarded the compensation as claimed by allowing the medical expenses and also applying relevant multiplier.

10. *Per contra*, the 3rd respondent contended that the Tribunal, having considered, both oral and documentary evidence, rightly awarded the compensation against respondents 1 and 2 absolving the liability of the

3rd respondent and amount awarded is reasonable and the same do not suffer from any legal infirmities warranting interference.

11. The undisputed fact is that the 2nd respondent S.Srinivasa Rao is the owner and the 1st respondent was the driver of the jeep bearing No.AP 31 TT 2196 as on the date of the accident on 10.9.2006. The said fact is proved by the evidence of P.W.4, the owner of the offending jeep, who in cross examination admitted that he is the owner of the jeep bearing No.AP 31 TT 2196 which is corroborated by the evidence of R.W.2, the Senior Assistant, RTA office, Visakhapatnam, who produced the B-Register extract and marked the same as Ex.B2 wherein P.W.4 is recorded as the registered owner.

12. The evidence of P.W.1 corroborated with P.W.4 and supported by the evidence of R.Ws.1 and 2 and Ex.B2 well established that the 1st respondent is the driver and the 2nd respondent is the registered owner of the offending vehicle – jeep bearing No.AP 31 TT 2196 at the time of the accident on 10.9.2006.

13. P.W.1 is the injured who in the claim petition specifically pleaded and in the evidence affidavit stated that on 10.9.2006 he boarded the jeep bearing No.AP 31 TT 2196 at Visakhapatnam, according to him, as a cleaner. When the said jeep reached near ayinada junction, a lorry came in opposite direction and on seeing the same, the 1st respondent – driver of the offending jeep applied sudden breaks, lost control over the jeep, as a result the jeep turned turtle. Ex.A1 is the certified copy of the F.I.R. presented by Karri Ramulamma, wherein she specifically stated that on 10.9.2006 at 12 noon she along with Salapu Laxminarayana, son of Kondala Rao, aged 22

years boarded the Peppers jeep No.AP 31 TT 2196 at Pedamajjipalem junction. As Per Ex.B2, the offending jeep is registered as goods carriage light motor vehicle. The Investigating Officer, after thorough investigation, filed the charge sheet against the 1st respondent finding that he drove the offending jeep with high speed with rash and negligent manner, applied sudden breaks, lost control and as a result, the jeep turned turtle and accident was due to the rash and negligence of the driver.

14. In the evidence P.W.1 stated that as on the date of the accident he was working as a Cleaner on the jeep belongs to P.W.4. P.W.4 in the evidence stated that from February, 2006 till September, 2006 the appellant/petitioner worked as a cleaner and later due to ill-health, he stopped to work on the jeep as a cleaner. During the cross examination P.W.1 deposed that "I was working as a supervisor in the Sai Ram Hotel, Maddilapalem during the year 2006." The Investigating Officer also in Ex.A2-charge sheet in the memo of evidence recorded that the appellant/petitioner was working as a Supervisor in Sai Ram Hotel, Maddilapalem, Visakhapatnam. Therefore, the clear admission of P.W.1 that he was working in Sai Ram Hotel as on the date of the accident in the year 2006 clinchingly prove that the presence of P.W.1 on the offending vehicle at the time of accident was as a gratuitous passenger, but not as a Cleaner. Such finding is legal, do not suffer from any legal infirmities warranting interference.

15. In the petition as well as in the evidence the petitioner P.W.1 stated that he used to earn Rs.3,000/- per month as a cleaner. Absolutely there is no oral evidence in support of P.W.1 that he was earning Rs.3,000/-

at the time of the accident. But, in these days, even a labour would earn Rs.3,000/- per month. The tribunal also taking into consideration that even an unskilled labour gets Rs.100/- per day i.e., Rs.3,000/- per month, assessed the income at Rs.3,000/- per month which also do not warrant any interference.

16. With regard to the age, in the petition the petitioner stated that he was 22 years by the date of the accident. In Ex.A1 – F.I.R. and Ex.A2 – charge-sheet, age of the petitioner is shown as 22 years. In the cross-examination P.W.1 stated that he was 25 years old as on the date of the accident, therefore, in the absence of any material, the Tribunal rightly took the age of the P.W.1 as 22 years by the date of the accident.

17. The contention of the appellant is that the Tribunal awarded only Rs.30,000/- towards medical expenses, in spite of Ex.A5 bunch of medical bills. The evidence of P.W.1 is that the treatment in the Government Hospital, Vizianagaram is free of cost, but after discharge, he was taken to private hospital for better treatment and spent huge amount for treatment and extra-nourishment. Ex.A5 is the bunch of bills issued by Dr.K.V.Rama Rao Hospital along with prescriptions and the total amount of which comes to Rs.1,58,050/-. P.W.2 is the Doctor who is running Dr.K.V.Rama Rao Hospital and in his evidence he clearly deposed that initially P.W.1 was admitted in his Hospital for 11 days, later he was admitted three times. The medical bills under Ex.A5 were issued by him. During cross-examination, he admits that the duplicate bill books are along with him, because he is keeping them for record purpose and denied the suggestion that he issued the medical bills to help the patient/P.W.1 and

further denied the suggestion that they are not genuine and not issued by him.

18. The above evidence of P.W.1 corroborated with the evidence of P.W.2, supported by Ex.A5 goes to suggest that the medicines which were purchased under Ex.A5 are under the prescription of P.W.2. In the chief P.W.1 did not state the amount actually spent, but he stated that he spent huge amounts. During the appeal grounds, he claimed Rs.80,000/- towards medical expenses. Even though the bills under Ex.A5 are Rs.1,58,050/-, since the appellant/claimant restricted his claim to Rs.80,000/-, I am of the view that awarding the said amount of Rs.80,000/- towards medical expenses is just and reasonable.

19. With regard to the age of the petitioner/appellant, in the claim petition he stated his age as 22 years, but during the cross-examination, he stated his age as 25 years. He signed the affidavit on 30.6.2009, whereas the accident was occurred on 10.9.2006.

20. The petitioner/appellant did not file any documents showing his correct age. In the petition he stated his age as 22 years. In Ex.A1 - F.I.R. as well as Ex.A2 - charge-sheet, age of the petitioner is mentioned as 22 years and in Ex.A5 medical bills also the age of the petitioner is mentioned as 22 years and in Ex.A4 – disability certificate dated 29.3.2010 the age of the petitioner is mentioned as 27 years. Therefore, the Tribunal, having considered all the above documents referred to above, came to the conclusion that the age of the petitioner - P.W.1 is 22 years as on the date of the accident.

21. The evidence of P.W.1 is that in the accident he sustained both grievous and simple injuries all over the body and fracture to his left hand. P.W.3 is the Doctor who worked in Government Headquarters Hospital, Vizianagaram. His evidence is that P.W.1 sustained compound injury to his left elbow joint, all the bones were exposed and crossly infected at the time he admitted in the M.R.Hospital, Vizianagaram. On 11.9.2006, he was admitted in Dr.K.V.Rama Rao Hospital. P.W.2 is the Doctor in Dr.K.V.Rama Rao Hospital, whose evidence is that P.W.1 sustained crush injury to left elbow and they have taken x.rays. On 15.9.2006 K.Wires were fixed under Superaclavicular block, subsequently skin grafting and dressing was done in the Hospital. For the first time, when he admitted he was in the Hospital for 11 days, thereafter he admitted three times. Ex.A3 is the wound certificate issued by the Civil Assistant Surgeon, Government District Hospital, Vizianagaram, wherein the Doctor who examined P.W.1 on 11.9.2006 observed compound fracture of left hand and the petitioner/P.W.1 absconded from the Hospital. Therefore, x.rays under Exs.A7 and A9 also show the fracture injury to the left elbow joint and all the bones were exposed and crossly infected and he undergone surgery and K.Wires were fixed and according to P.W.2 the petitioner/appellant has to undergo another operation for removal of implants.

22. According to the evidence of P.W.2, petitioner/appellant's disability is 60%. X.ray was taken under Ex.A9 and based on which the Medical Board examined the petitioner on 29.3.2010 and issued Ex.A4 disability certificate assessing the disability at 55% partial and permanent in nature. P.W.3 further assessed that the petitioner/appellant cannot work as

he worked earlier and denied the suggestion that he can do normal duties. According to P.W.2 disability is 60% and the Medical Board presumed his elbow not functionary. So, his left elbow was fractured and bones were exposed, but since he is working as Supervisor in the Hotel, it is not a complete disability and he can attend his duties in spite of fracture to his left elbow. Therefore, there is no complete loss of earnings. Basing on the x.ray under Ex.A9, I am of the considered view that the disability can be presumed at 30%.

23. Having estimated the monthly income of the deceased at Rs.3,000/-, the annual income comes to Rs.36,000/- and by applying the relevant multiplier to the age of the injured i.e., '18', the compensation comes to Rs.6,48,000/-, and 30% of which comes to Rs.1,94,400/-.

24. Besides that the appellant/claimant is entitled to Rs.80,000/- towards medical expenses; Rs.10,000/- towards pain and sufferings and Rs.15,600/- towards extra-nourishment.

25. Thus, in all the claimant is entitled to Rs.3,00,000/- towards compensation.

26. Admittedly, the 1st respondent is the driver and the 2nd respondent is the owner of the offending jeep bearing No.AP 31 TT 2196. The 2nd respondent being the owner, he is vicariously liable for the acts of the 1st respondent – driver. Admittedly, the offending jeep was insured with the 3rd respondent under Ex.B1 policy which was in force with effect from 16.6.2006 to 15.6.2007, whereas the accident has occurred on 10.9.2006 by which date Ex.B1 policy was in force.

27. In the case of *Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors.* the Apex Court followed the decision in *Manager, National Insurance Company Limited Vs. Saju P.Paul & Anr.* {(2013) 2 SCC 41} wherein it was held that since the victim was travelling in offending vehicle as “gratuitous passenger” and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “pay and recover”.

28. The facts of the present case are same to the facts of that case. P.W.1 – claimant was found travelling as a gratuitous passenger in the offending vehicle, as such the insurance company was exonerated from the liability. The M.V.Act is a beneficial legislation. The petitioner is working as a Supervisor in the Hotel and because of poverty, it would be difficult for him to recover the compensation from respondents 1 and 2. Therefore, in the interest of justice by applying the above decision to the facts of the present case, the 3rd respondent – Insurance Company can be directed to pay and recover by following the judgment in *Manager, National Insurance Company Limited Vs. Saju P.Paul & Anr.* (supra).

29. In view of the foregoing discussions, I am of the considered view that the Tribunal erred in awarding Rs.30,000/- only towards medical expenses, in spite of Ex.A5 and the evidence of P.W.2. Further, the Tribunal

erred in awarding Rs.50,000/- towards compensation without applying the relevant multiplier and considering the income and age of the injured P.W.1.

30. The Tribunal rightly made the respondents 1 and 2 jointly and severally liable to pay the compensation, but erred in not ordering pay and recovery. The 3rd respondent being the insurer of the offending vehicle which was found involved in causing accident due to the negligence of the 1st respondent as its driver and by virtue of Ex.B1 policy and since the M.V. Act is beneficial legislation, it needs to be issued direction to the 3rd respondent – Insurance Company to pay the Award sum to the appellant/claimant and then recover the same from the 2nd respondent/owner of the offending vehicle in execution proceedings arising in this very case as per the law laid down in the case of *Manager, National Insurance Company Limited Vs. Saju P.Paul & Anr.* (supra).

31. Accordingly, the appeal is allowed while setting aside and modifying the award and decree dated 28.9.2010 in M.O.P.No.27 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Special Judge for trial of cases under S.Cs. & S.Ts. (PoA) Act-cum-Additional District & Sessions Judge, Vizianagaram and passed the modified award for Rs.3,00,000/- against the respondents 1 and 2 jointly and severally with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of deposit or realization, which shall be deposited, after adjusting the amount, if any, already deposited or paid, within a period of 30 days from the date of receipt of a copy of the appeal judgment. The 3rd respondent – insurance company is directed to deposit/pay the award amount to the appellant/claimant and thereafter the 3rd respondent – Insurance

Company should be entitled to recover the paid amount from the 2nd respondent – owner of the offending vehicle/insured driven by the 1st respondent to which the 2nd respondent is the owner in the very same proceedings by filing execution application against the 2nd respondent – insured.

32. On such deposit of the compensation by the 3rd respondent, the claimant is permitted to withdraw the same.

33. Advocate fee is fixed at Rs.2,500/-.

34. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Date : 15.12.2018

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JUSTICE N.BALAYOGI