

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. 1137 OF 2016

JUDGMENT:

This appeal is preferred by the appellant/Insurance Company questioning the order of the Motor Accidents Claims Tribunal-cum-IX Additional Chief Judge, City Civil Court at Hyderabad (for short, the Tribunal) in O.P.No.170 of 2011, dated 17.12.2015.

2. The brief facts of the case are that on 07.11.2010 at about 11.00 A.M., when the appellant was travelling in Mini Bus bearing No.AP9V 9670, proceeding from Hyderabad to Srisailam, and when it reached near Debbaguda gate, the driver of the bus drove it in high speed, in a rash and negligent manner, and dashed to innova car bearing No.AP9BX 324. Due to the said accident, the appellant sustained fracture of right leg, ankle foot and other multiple injuries. He filed the aforesaid MVOP against owner of the bus (respondent No.2 herein) and insurer of the bus (appellant herein), claiming compensation of Rs.3,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent No.1 remained *ex parte*. The appellant-Insurance Company filed its counter denying the allegations and contended that the amount claimed by the claimant is highly excessive and that the insurance company is not liable to pay any compensation and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident

occurred due to the rash and negligent driving of the driver of the bus and awarded total compensation of Rs.1,65,000/- i.e., Rs.30,000/- towards injuries, Rs.1,15,000/- towards medical bills, Rs.10,000/- towards pain and suffering and Rs.15,000/- towards extra nourishment, with interest at the rate of 7.5% per annum. Aggrieved by the said order, the appellant/Insurance Company filed the present appeal.

5. Sri T.Mahender Rao, learned counsel appearing for the appellant-insurance company, submitted that when a claim petition is filed under Section 163-A of the Motor Vehicles Act, 1988 (for short, the Act), medical expenses do not exceed Rs.15,000/- as per Clause 4(ii) of the Second Schedule, but the Tribunal wrongly awarded Rs.1,15,000/- towards medical bills. In support of his contention, he relied on a decision reported in **Chintala Krishna Murthy V. K.Surya Prakash Rao¹, U.P. State Road Transport Corporation V. Trilok Chandra² and National Insurance Co. Ltd. V. Saroj³.**

6. Smt.A.Chaya Devi, learned counsel respondent No.1/claimant, submitted that the injured sustained compound fracture of lower 1/3rd of right leg, fracture of right ankle and fracture of middle cuneiform of right foot and other multiple injuries, for which, he underwent surgeries in various hospitals and incurred a sum of Rs.1,15,000/- towards medical bill. As there is no bar in awarding more than the amount fixed in Second

¹ 2012 (4) ALD 581

² 1996 ACJ 831

³ (2009) 13 SCC 508

Schedule of the Motor Vehicle Act, the Tribunal has awarded Rs.1,15,000/- taking into consideration the medical bills. In support of here contention, she relied on **United India Insurance Co. Ltd. V. Ved Prakash**⁴, **Puttamma V. K.L.Narayana Reddy**⁵ and **Oriental Insurance Company Limited V. Kulwinder Kaur**⁶

7. In view of the above, the point that arises in the present appeal is *‘whether in a petition under Section 163-A of the Act, the Tribunal can award actual medical expenses ignoring the maximum limit of 15,000/- as prescribed in Clause 4(ii) of Second Schedule of the Act?’.*

8. In **Chintala Krishna Murthy (died) and Others**’s case (supra), a single Judge of this Court held that since claim is under Section 163-A of the Act, apart from compensation for loss of earning capacity on account of injury, except a sum of Rs.5,000/- for grievous injury, Rs.1,000/- for simple injury towards pain and suffering and Rs.15,000/- towards medical expenses, no amounts are permissible.

9. In **Ved Prakash**’s case (supra), the High Court of Punjab and Haryana at Chandigarh upheld the order of the Tribunal therein in departing from Second Schedule and awarding actual medical expenses incurred by the injured. In **Puttamma**’s case (supra), a Division Bench of the Hon’ble Supreme Court held that Second Schedule as was enacted in 1994 has now become redundant,

⁴ 2018 ACJ 921

⁵ 2014 ACJ 526

⁶ 2014 ACJ 1625

irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy and directed the Central Government to amend the Second Schedule. In **Kulwinder Kaur's** case (supra), High Court of Punjab & Haryana, by referring the decisions of the Hon'ble Supreme Court wherein it has been held that the Second Schedule contains a number of fallacies and it has to be followed in broad principles and that in suitable cases where treatment is long or loss is heavy, the compensation cannot be kept confined within the limits prescribed by the Second Schedule, rejected the argument of the insurance company therein that the compensation has to be awarded as per the Second Schedule.

10. It is to be noted that once an opinion has been formed by the Hon'ble Supreme Court in **Puttamma's** case (supra), and expressively directed the Central Government to amend the Second Schedule, it is the bounden duty of this Court to follow the same with due respect. In view of the same, I am of the opinion that there is no need to restrict the medical expenses at Rs.15,000/- as per Clause 4(ii) of the Second Schedule. The issue is decided accordingly. The Tribunal had rightly departed from Second Schedule and awarded actual medical expenses incurred by respondent No.1/claimant. Hence, I see no grounds to interfere with the order of the Tribunal and accordingly, the appeal is liable to be dismissed.

11. Accordingly, the Motor Accident Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 04-09-2019
TJMR

