

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A.No.1571 OF 2005

JUDGMENT:

The present appeal is preferred by respondent No.2 – The New India Assurance Company Limited in M.V.O.P.No.139 of 1999 on the file of Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge, R.R.District, NTR Nagar, Hyderabad, aggrieved by the order and decree, dated 18.06.2003, passed in the said O.P., whereby and whereunder, a sum of Rs.1,25,642/- was awarded as compensation to the 1st respondent herein payable by both respondents i.e. 2nd respondent (owner of the offending vehicle) and appellant herein.

2. The appellant-The New India Assurance Company Limited is respondent No.2, whereas respondent No.1 is the petitioner/injured and respondent No.2-the owner of the DCM Van bearing No.ABT-926 that involved in the accident, who is 1st respondent, in the O.P. before the Tribunal.

3. The fact-situation would reflect that, on 19.10.1998, while the petitioner was proceeding on the Scooter AP 9L 8550, when he reached near Maitrivanam Traffic Singal, one DCM Van bearing No.ABT 926 dashed petitioner's scooter in a rash and negligent manner from his behind, as a result of which the petitioner sustained fracture on Patella with lacerated skin and fracture on condyle of femur besides other injuries.

Immediately, he was shifted to Yashoda Hospital at Somajiguda and treated as in-patient and the doctors conducted operation for the injury sustained by him and the petitioner was bed ridden for several months. The petitioner is unable to move and walk properly and he is unable to sit and squat properly due to the fracture sustained by him. A case was registered in Cr.No.614/1998 by the Police Sanjeevareddynagar against the driver of the said DCM van. The petitioner was working as Field Officer on a monthly salary of Rs.5,500/- in Sravya Chit Fund Private Limited and due to the accident, the petitioner was unable to discharge his duties as Field Officer. Hence, he claimed Rs.2,00,000/- along with interest towards compensation.

4. The 1st respondent filed counter contending that the petitioner has to prove that the accident took place on account of the rash and negligent driving of the driver of the DCM Van and also medical expenses incurred by the petitioner. He also contended that since his vehicle was insured with the 2nd respondent, the 2nd respondent-insurance company alone is liable to pay compensation.

5. The 2nd respondent filed counter contending that the petitioner has to prove that the accident took place only on account of the rash and negligent driving of the driver of the DCM van and that the driver of the DCM van was having valid driving licence at the time of accident. It was further contended

that the petitioner has to prove the nature of injuries sustained by him and the medical expenses he had incurred; and that the amount of compensation claimed by the petitioner is excessive.

6. The Tribunal framed the following issues:

- “1. Whether the accident occurred on 09.10.1998 opposite of Maitrivanam, Ameerpet, Hyderabad due to rash and negligent driving of the driver of the Cococola Van bearing No.ABT 926?*
- 2. Whether the petitioners are entitled to any compensation if so, how much?*
- 3. To what relief?*

7. During enquiry, on behalf of the petitioner, he himself was examined as PW1 and marked Exs.A1 to A25. On behalf of the 1st respondent none was examined and no document was marked. On behalf of the 2nd respondent none was examined but a copy of the policy was marked as Ex.B1.

8. The Tribunal, basing on the evidence of PW1 coupled with documentary evidence i.e. Ex.A1, held that the accident occurred due to the rash and negligent driving by the driver of the DCM van.

9. On issue No.2, the Tribunal, basing on the evidence of Ex.A8-discharge notes, Ex.A10-discharge card and Ex.A3-Medico Legal Record, awarded an amount of Rs.40,000/- towards partial permanent disability and Rs.15,000/- towards pain and suffering. Since the petitioner was on leave from 09.10.1998 to 09.01.1999, basing on the documentary evidence

of Exs.A3 to A6-letter and certificates issued by the employer of the petitioner, the Tribunal awarded a sum of Rs.16,500/- towards loss of income during treatment period. Basing on the documentary evidence of Exs.A14 to A23-Medical bills and receipts, the Tribunal granted an amount of Rs.54,142/- towards medical expenses. Since the petitioner has not filed any disability certificate to show that he could not attend to his normal duties subsequent to his taking bed rest, the Tribunal has not awarded any amount towards loss of future income of the petitioner.

10. Thus in total the Tribunal awarded an amount of Rs.1,25,642/- as compensation to the petitioner with interest @ 9% p.a. from the date of petition till the date of realization making both the respondents liable to pay compensation to the petitioner.

11. Dissatisfied with the award of compensation granted by the Tribunal, the 2nd respondent-The New India Assurance Company Limited preferred the instant appeal alleging that the compensation awarded by the Tribunal is excessive.

12. Learned Counsel for the appellant submits that with regard to granting of compensation of Rs.40,000/- towards partial permanent disability, neither any certificate is filed nor doctor is examined by the petitioner. Even, in respect of medical expenses nobody is examined, except self serving statement of

the claimant. He also submits that the Tribunal granted interest @ 9% p.a. which is on higher side.

13. None appears for the respondents.

14. A perusal of the award goes to show that respondent No.1 is examined himself as PW1 and no doctor evidence is produced by the claimant. Only basing on the record of the hospital an amount of Rs.40,000/- was granted towards partial permanent disability. Learned counsel for the appellant in the grounds of appeal submits that as per Judgment reported in ***United India Insurance Company Limited, Hyderabad v. Mohd.Khaja Sayyed (2003 (5) ALD 162)*** when doctor is not examined and no certificate is filed no amount should be granted towards disability. As such, the respondent No.1/claimant is not entitled for the said compensation.

15. As far as medical expenses are concerned medical bills are marked as Exs.A14 to A23, and basing on the same, the Tribunal granted amount towards medical expenses and the same cannot be faulted.

16. It is to be seen that the claimant suffered two fractures and no amount was granted towards said fractures by the Tribunal. An amount of Rs.10,000/- each can be granted towards the said two fractures.

17. As such, the compensation awarded by the Tribunal towards partial permanent disability is reduced by 20,000/- by

adjusting the said 20,000/- towards grant of compensation for the two fracture injuries.

18. The Apex Court in **TAMILNADU STATE TRANSPORT CORPORATION LIMITED v S.RAJAPRIYA**¹ held that interest on the compensation amount shall be at the rate of 7.5 per cent per annum. But the Tribunal granted 9 per cent. In view of the same, the interest granted by the Tribunal is modified to 7.5 per cent per annum on the compensation amount.

19. Accordingly, the appeal is allowed in part reducing the compensation granted towards partial permanent disability by Rs.20,000/- and by adjusting the said Rs.20,000/- towards grant of compensation towards two fractures. The interest granted by the Tribunal @ 9% p.a. is also reduced to 7.5% p.a. from the date of petition till the date of realization. Except the above, the amount of compensation awarded by the Tribunal in all other aspects respects is confirmed. No order as to costs.

As a sequel, miscellaneous applications, if any, pending in this appeal shall stand closed.

A.RAJASHEKER REDDY, J

19.02.2018
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¹ 2005(4) ALT 14 (SC)