

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A.No.1153 OF 2010

JUDGMENT:

The present appeal is preferred by respondents No.2 and 3 – The New India Assurance Company Limited in M.V.O.P.No.13 of 2007, on the file of Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge, Warangal, aggrieved by the order and decree, dated 31.01.2009, passed in the said O.P., whereby and whereunder, a sum of Rs.3,47,000/- was awarded as compensation to the 1st respondent herein payable by all the respondents i.e. 1st respondent-owner of the crime vehicle, 2nd respondent-New India Assurance Company by which the crime vehicle is insured and the 3rd respondent- local office of the 2nd respondent, who are the appellants herein.

2. The appellants-The New India Assurance Company Limited are respondent Nos.2 and 3, whereas respondent No.1 is the petitioner/injured and respondent No.2-the owner of the Auto bearing No.AP 36W 3191 that involved in the accident, is the 1st respondent, in the O.P. before the Tribunal.

3. The fact-situation would reflect that, on 31.10.2006 while the petitioner was waiting for bus in front of Suresh Hotel, Near Venkatrama Talkies Cross road, one Auto Trolley bearing No.AP 36W 3191 driven by its driver in a rash and negligent manner with high speed and dashed against the petitioner's left

foot, resulting crush injury on her left foot and simple injuries all over her body. Immediately, the petitioner was shifted to M.G.M.Hospital, Warangal where she was treated for fracture injury as inpatient from 31.10.2006 to 02.11.2006 and as her condition was serious she was shifted to Mourya Hospital, Mulug where she was treated as inpatient from 02.11.2006 to 20.11.2006. In the said period she was operated and her foot was amputated and again she was admitted in Mourya Hospital for Skin grafting from 08.12.2006 to 20.12.2006. Due to the accident, the petitioner lost her business and became permanently disabled and unable to do her business of selling vegetables. Basing on the report of petitioner's daughter K.Kalpna, on 03.11.2006, the S.H.O., Inthezargunj, registered a case in Crime No.273/2006 under Sec.337 IPC. The petitioner further pleaded that she had incurred huge amounts towards her medical expenses and has to suffer limping, life long, due to the amputation. Hence, the petitioner claimed an amount of Rs.5,00,000/- towards compensation.

4. The 1st respondent remained exparte before the Tribunal.

5. The 3rd respondent filed counter denying the occurrence of accident, involvement of petitioner in the alleged accident, rash and negligent driving of crime auto by its driver and also injuries sustained by the petitioner. It further denied the income, age, occupation and health condition of the petitioner

at the time of accident. It is alleged that the matter of accident was not reported by the police immediately after receipt of information or after filing charge sheet and that there is delay of three days in lodging complaint and that the petitioner had colluded with 1st respondent by falsely implicating the auto to claim compensation from respondents 2 and 3. It is also alleged that the compensation claimed by the petitioner under different heads is excessive and that the crime vehicle was not insured at the time of accident.

6. The 2nd respondent filed adoption memo adopting the counter filed by the 3rd respondent.

7. Basing on the aforesaid pleadings the Tribunal framed the following three issues;

1. Whether the accident that took place due to rash and negligent driving of driver of Auto Trally bearing No.AP 36W 3119?
2. Whether the petitioner is entitled for compensation? If so, to what amount and from whom?
3. To what relief?

8. During enquiry, on behalf of the petitioner, she herself was examined as PW1, Dr.S.Laxminarayana, who is working as Consultant Surgeon in Mourya Hospital, Warangal and treated and operated the petitioner, was examined as PW2, and Sri P.Kali Prasad Rao, Orthopaedic Surgeon in MGM Hospital, who examined the petitioner and issued disability certificate, was examined as PW3. On behalf of petitioner Exs.A1 to A7 and

Ex.X1 and X2 were marked. On behalf of 2nd respondent and third respondents G.Krupaker who is working as Senior Assistant in 3rd respondent insurance company was examined as RW1 and a copy of the policy is marked as Ex.B1 and the case sheet pertaining to the petitioner of MGM Hospital, Warangal is marked as Ex.X3.

9. The Tribunal, on appreciation of evidence on record, recorded finding on issue No.1 in favour of the petitioner.

10. On Issue No.2, the Tribunal basing on the age, avocation and nature of amputation sustained by the petitioner to her left foot, awarded an amount of Rs.50,000/- towards pain and suffering. With regard to permanent disability the Tribunal has taken the income of the petitioner at Rs.3,000/- per month which comes to Rs.36,000/- p.a. and by taking the age of petitioner as 35, applied multiplier 15, and calculated permanent disability at Rs.2,70,000/-. An amount of Rs.25,000/- was granted by the Tribunal towards medical expenses, extra nourishment and special diet and attendant charges. The Tribunal awarded Rs.2,000/- towards transportation charges. Thus, in total an amount of Rs.3,47,000/- was awarded to the petitioner by the Tribunal towards compensation with interest @ 7.5% p.a. from the date of petition till the date of deposit making respondents 1 to 3 jointly and severally liable to pay the compensation.

11. Aggrieved by the award of compensation by the Tribunal, the 2nd and 3rd respondents filed the present appeal.

12. Learned counsel for the appellant/insurance company submits that there is inconsistency in pleadings and evidence. He also submits that Ex.A7- disability certificate issued by PW3 shows that she suffered amputation due to leprosy, but not due to injuries sustained in the present road accident, as such, no amount would have been granted by the Tribunal towards disability as the disability was not sustained by the petitioner only on account of accident which is the subject matter of this appeal. He further stated that the matter of accident was not reported by the police immediately after receipt of information or after filing charge sheet and that there is delay of three days in lodging complaint.

13. On the other hand learned counsel for the 1st respondent/claimant submits that after cross-examination of PW3, the Court below declared PW3 as hostile witness and accorded permission to the petitioner to cross-examine PW3. During further cross-examination of PW3 by the petitioner's counsel it was elicited that it is not mentioned in Ex.A7 that the patient has stated before him that her left limb was amputated due to leprosy. It was also categorically answered by PW3 during his further cross examination that he has not examined the patient thoroughly and he did not see any leprosy patches on her skin; and that the amputation upto middle foot and the percentage of the disability at 50% are admitted by PW3. In view

of the same, the Tribunal believed the evidence of PW2-Doctor that the claimant/appellant suffered 50% disability coupled with Exs.X1 and X2. As such, no interference is called for. He also stated that the delay of three days in filing FIR was explained and that was considered by the Tribunal. He also states that the Tribunal gave finding that the accident occurred due to rash and negligent driving of the driver of the offending vehicle, due to which the petitioner suffered injuries.

14. While considering Issue No.1 the Tribunal by relying on Ex.A1-FIR, A3-charge sheet coupled with oral evidence came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. The delay of three days in filing complaint also explained stating that except daughter of the claimant there was nobody to look after the claimant and that her daughter was attending the claimant in the MGH Hospital, as such the complaint could not be given immediately. The delay was considered by the Tribunal and held that the accident is proved.

15. The Tribunal also placing reliance on the evidence of PW2 came to the conclusion that the injuries are proved and as such there no reason to disbelieve the same. As far as quantum of compensation is concerned, PW3 who was one of the signatory to Ex.A7-disability certificate issued by medical board was declared as hostile, and in his further cross-examination he admitted that basing on the statement of the claimant/appellant, he has stated in Ex.A7 that the amputation

was due to the disease suffered by the claimant/appellant. But, PW2 clearly stated that amputation was done by him and Tribunal believed PW2 and also exhibits marked in respect of the same. Basing on other evidence i.e. Exs.A4, A5 and A6 and evidence of PW2, the tribunal came to the conclusion that there was amputation due to injuries suffered by the claimant/appellant and taken 50% as disability basing on Exs.A7.

16. As such, this Court is not inclined to accept the contention of the appellant that the amputation was due to the disease suffered by the claimant/appellant. Just because different view is possible, this Court is not inclined to interfere with the said finding in the appellate jurisdiction. In view of the same, I do not see any reason to interfere with the award of compensation granted by the Tribunal.

17. Accordingly the appeal is dismissed. No order as to costs.

As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY, J

20.02.2019
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