

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+M.A.C.M.A. No.1256 OF 2006

% Delivered on: 06-02-2020

Between:

Vojje Mahankali

.. Appellant

Vs.

\$ 1. M. Satyanarayana

2. M/s. United India Insurance Co. Ltd.,
Sangareddy Branch, Sangareddy.

.. Respondents

! For Appellant

: Mr. Palle Sriharinath

^ For Respondent No.2

: Mr. J. Sunil Kumar,

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> Head Note

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? Cases Referred

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1. 2015 ACJ 2232
2. (2009) 6 SCC 121
3. (2019) 2 SCC 192

THE HON'BLE SRI JUSTICE K. LAKSHMAN**M.A.C.M.A. No.1256 OF 2006****JUDGMENT:**

Feeling aggrieved by the order and decree dated 18.01.2006 in M.V.O.P. No.263 of 2002 passed by the Motor Accidents Claims Tribunal - cum - III Additional District & Sessions Judge (Fast Track Court), Medak (for short 'the Tribunal'), the petitioner preferred the present appeal.

2. Vide the aforesaid order, the Tribunal dismissed the claim petition filed by the appellant - petitioner against respondent Nos.1 and 2, owner and insurer of Jeep bearing registration No.AP-15-E-4418, under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,50,000/- for the injuries he sustained in a road accident, on the ground that the petitioner failed to prove that he sustained grievous injuries in the accident and the appellant received the same by 'horn of bull'.

3. Heard Mr. Palle Sriharinath, learned counsel for the appellant - petitioner and Mr. J. Sunil Kumar, learned counsel for respondent No.2 - Insurer. It is relevant to note that the above appeal was dismissed for default against respondent No.1 by this Court vide order dated 27.06.2016.

4. The case of the petitioner is that on 21.04.2000 he along with his relatives went in a Jeep bearing registration No. AP 15E 4118 to

attend the family function at Dubbak and while they were returning to Rajaipally village, when their jeep reached the outskirts of Chittapur near Electricity Sub-Station, its driver drove the jeep in a rash and negligent manner at high speed and dashed a lorry that was going towards Siddipet from behind. Due to the said accident, he received injuries besides fracture on his backbone and got rupture of abdomen. He was shifted to Gandhi Hospital, Secunderabad, where he was treated as in-patient from 21.04.2000 to 09.06.2000. The police registered a case vide Ex.A1 - FIR and filed charge sheet vide Ex.A2 after investigation. According to him, the petitioner used to do agriculture labour work and used to earn Rs.3,000/- per month. After the accident he was unable to move from the bed due to fracture of backbone. Therefore, he filed the claim petition seeking an amount of Rs.2,50,000/- as compensation against respondent Nos.1 and 2, owner and insurer of the crime vehicle.

5. It is relevant to note that respondent No.1, owner of the jeep, remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurer filed counter contending that there is no accident as alleged by the appellant - petitioner occurred. Insurer has disputed the very liability itself. It has further contended that the appellant along with his relatives engaged the Jeep and it is a private vehicle and does not cover the people traveling in it on hire. Therefore, with the said contentions, respondent No.2 prayed to dismiss the claim petition filed by the appellant.

7. The Tribunal on analysis of the entire evidence, both oral and documentary, gave a finding that since the very basis of the case allowed any amount of doubt, suspicion and created a cloud of disbelief, the claim of the petitioner fails to succeed. The Tribunal gave a further finding that a false and fictitious claim is filed with fabricated documents and if at all the petitioner sustained grievous injuries by “Horn of Bull”, the remedy is elsewhere but not before the Tribunal. With the said findings, the Tribunal dismissed the claim petition filed by the petitioner.

8. Impugning the order, the learned counsel for the appellant would submit that the Tribunal erred in holding that the appellant sustained grievous injuries by ‘horn of bull’ and the said finding of the Tribunal is without any basis. According to him, the Tribunal failed to consider Ex.A1 - FIR, Ex.A2 - charge sheet, Ex.A3 - medical certificate and Ex.A4 - accident register. He would further contend that the Tribunal failed to consider Exs.A5 to A15 documents and also depositions of PWs.1 and 2. The Tribunal without any basis wrongly gave the finding that the appellant sustained grievous injuries due to ‘horn of bull’ but not in a motor accident. With the said contentions, the learned counsel for the appellant sought to set aside the impugned order by granting compensation against respondent Nos.1 and 2, owner and insurer of the jeep.

9. On the other hand, the learned counsel for respondent No.2 - Insurer would contend that the appellant with the help of others,

created fake documents with a *malafide* intention to claim compensation against Insurer. According to him, the appellant sustained injuries due to 'horn of bull' but not due to accident. According to him, the Tribunal rightly gave the said finding and there is no error in it to interfere by this Court in the present appeal.

10. On perusal of the entire record, particularly Ex.A1 - FIR, one Sanku Siva lodged a complaint on 22.04.2000 to the Sub-Inspector of Police, P.S. Dubbak complaining that he is working as a driver and Mr. Srinivas Rao is working as Cleaner on lorry bearing registration No.AP 9B 239. On 19.04.2000 while they were coming in the said lorry with soaps loaded from Maharashtra to Vijayawada, on 21.04.2000 at about 11.30 p.m., when their lorry reached near Chittapur, jeep bearing registration No.AP 15E 4418 driven by its driver in a rash and negligent manner, at high speed came from side and dashed their lorry, due to which, the persons traveling in the said jeep received injuries. A person, who received blood injuries, was shifted to Hospital and thereafter the said complainant came to know that the said person who sustained injuries in the accident is one Vojje Mahankali. With the said contents, he lodged the complaint, on which the police registered a case by issuing Ex.A1 - FIR.

11. The police after investigation filed Ex.A2 - charge sheet, wherein it is also alleged that the accident was due to rash and negligent driving of the driver of the jeep. Though FIR was registered under Section 337 IPC, police filed charge sheet under Section 338

IPC. Ex.A3 is MLC issued by the Gandhi Hospital, Secunderabad, wherein it is mentioned that injuries received by the injured are grievous in nature. Ex.A4 is the Accident Register, wherein the name is mentioned as 'Mankali, son of Yellaiah. It is also mentioned under the column 'nature of injury and treatment' as "alleged to have been hit with the horn of a bull causing penetration injury to the right lumbar region, at 11.30 p.m. on 21/4/2000 at Chittapur. It also discloses about the injuries received by the appellant. The appellant also filed Exs.A5 to A15 which are medical prescriptions, reports, bills and X-ray films in proof of his claim.

12. It is relevant to mention that except in Ex.A4 - Photostat copy of accident register no where it is mentioned that the appellant sustained grievous injuries due to 'horn of a bull'. Even in Ex.A4 also it is mentioned as 'alleged to have been hit with the horn of a bull'. The appellant examined the doctors, viz., Dr.V. Prashanth as PW.2 and Dr. Ch. Shankar as PW.3. It is also relevant to note that respondent No.2 - Insurer did not take a plea in the counter filed before the Tribunal that the appellant sustained grievous injuries due to 'horn of a bull', but not due to accident. It is relevant to mention here that there is not even a suggestion by respondent No.2 - Insurer to PW.1 during cross-examination that the appellant sustained grievous injuries due to 'horn of a bull' but not due to the accident. It is also necessary to mention that no suggestions were put to PW.2 and PW.3, the doctors, by respondent No.2 - Insurer that the appellant

sustained grievous injuries due to 'horn of a bull' but not due to accident, and there is no other document or evidence to that effect except Ex.A4 - Photostat copy of accident register. But, unfortunately, the Tribunal without considering the said aspects, gave a finding that "the first doctor, who examined and treated PW.1, noted in Ex.A4 that the injury is penetrated alleged to have caused with the 'Horn of a bull', but does not disclose that it was due to motor accident." The Tribunal also recorded a finding that it is astonishing to note how the injuries sustained by Horn of a bull suddenly turned to Motor accident. The Tribunal also gave a finding that the burden is on the petitioner to explain why it was mentioned that he sustained injured by "horn of bull" and how it is suddenly shifted to a motor accident. With the said findings, the Tribunal dismissed the claim petition filed by the petitioner seeking compensation against the respondents.

13. As discussed above, Ex.A1 - FIR and Ex.A2 - charge sheet disclose the factum of accident and there was a complaint given by the driver of the lorry and that the police filed Ex.A2 charge sheet after completion of investigation. Even, as per Ex.A2 charge sheet, there was an accident, in which the appellant sustained grievous injuries. At the cost of repetition, respondent No.2 - Insurer neither taken a plea stating that the appellant sustained grievous injuries due to 'horn of a bull' but not due to accident, nor put a suggestion to PWs.1 to 3 during cross-examination to that effect. In the absence of same and

also in the absence of any evidence including documentary evidence, the finding of the Tribunal that the appellant sustained grievous injuries due to hit with the 'horn of a bull' is incorrect. It is true that initial burden lies on the appellant to prove such injuries. In discharge of said burden, the appellant filed Exs.A1, A2 and Exs.A3 to 15. As stated above, except Photostat copy of Ex.A4 - accident register, there is no other evidence to show that the appellant received injuries due to hit with 'horn of a bull'. More over, in Ex.A4, the doctor opined that the said injuries *alleged* to have been hit with the 'horn of a bull'. The Tribunal lost sight of other documents i.e., Exs.A1 to 3 and 5 to 15. The Tribunal went on suspecting the conduct of the appellant rather than appreciating other available evidence on record. The Tribunal also ignored the main object of the Act itself. The M.V. Act is a beneficial legislation and if two views are possible, the view favourable to the persons for whose benefit the Act is enacted, has to be taken into consideration to achieve the real object as held by a Division Bench of this Court in **K. Varalaxmi v. United India Insurance Co. Ltd.**¹.

14. In view of the above discussion, this Court is of the opinion that the impugned order dated 28.01.2006 passed by the Tribunal in MVOP No.263 of 2002 passed by the Tribunal is unsustainable, both on facts and in law and, accordingly the same is hereby set aside.

¹. 2015 ACJ 2232

15. Now the point that falls for consideration is with regard to the entitlement of compensation by the appellant.

16. It is the contention of the appellant that he used to earn an amount of Rs.3,000/- per month by doing agriculture labour work and that prior to the accident he was hale and healthy. On account of injuries, which are grievous in nature he was unable to attend to his normal work. Admittedly, Ex.A3 discloses that the injury received by the appellant was grievous one. As per Ex.A5, the appellant sustained injury viz., laceration 10 cm x 5 cm., deep right lumbar region, which is grievous one. In this connection, it is relevant to discuss the evidence of doctors, who were examined as PW.2 and PW.3. PW.2 - Dr. V. Prashanth, who was C.M.O., Gandhi Hospital, Secunderabad, has categorically admitted that the appellant was admitted in their hospital with I.P. No.12496 on 22.04.2000. At the time of admission, the appellant sustained polytrauma including comminuted right iliac bone with retroperitoneal hematoma and that the said injuries were grievous in nature. The appellant had undergone treatment on the same day under emergency ward and that he was discharged on 09.06.2000. He further deposed that in view of the said fracture injuries, the appellant suffered 40% disability permanently and that he would not do agriculture work and heavy labour work. After discharge, the appellant was advised to attend the hospital for further treatment. As per the said evidence, the appellant was undergoing treatment in the said hospital for more than one and half month.

17. PW.3, a private doctor, deposed that after discharge from the Gandhi Hospital, since the appellant was suffering from pain, he was admitted in their hospital on 15.06.2000 and operated on 17.06.2000. As the appellant was suffering from multiple fractures and right iliac crest which caused osteomyelitis and that he was discharged on 17.09.2000. He has also deposed that the on account of such grievous injuries, the appellant would not do agriculture work and heavy labour work and that Exs.A6 to A12 were issued by their Hospital.

18. On the analysis of the evidence of PW.2, doctor of Gandhi Hospital, has categorically admitted that the appellant suffered disability at 40%. Respondent No.2 did not elicit anything contra to the said disability either by eliciting from his cross-examination or by producing any documentary evidence. In the said circumstances, it can safely be concluded that the appellant had suffered 40% disability. It is claimed by the appellant that he was earning an amount of Rs.3,000/- per month by doing agriculture labour work. The accident had occurred in the year 2000. No contra evidence has been produced by respondent No.2. In the said circumstances, the said amount of Rs.3,000/- is taken as monthly earnings of the appellant or Rs.36,000/- per annum. It is mentioned in cause title of the claim petition that the appellant was 30 years old, but as per Ex.A4 - accident register, age of the appellant is shown as 35 years, whereas in the charge sheet, his age has been shown as '25' years. In such circumstances, his age can safely be taken as 30 years. For the age groups of 26-30 years, the

relevant multiplier is '17' as per the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**², and when the same is multiplied with the annual income, it would come to Rs.6,12,000/- (Rs.36,000 x 17), and 40% disability would work out to Rs.2,44,800 and, accordingly the same is awarded.

19. As per the medical evidence, both oral and documentary, the appellant initially was in Gandhi Hospital for more than one and a half months and thereafter he was admitted in Peoples Hospital, Musthabad, Karimnagar District where an operation was done and took the treatment as inpatient for about three months. In the said circumstances more or less the petitioner had taken treatment as inpatient for about five months and during the said period, he lost his earnings. Therefore, a sum of Rs.30,000/- is awarded towards loss of past earnings for five months @ Rs.3,000/- per month. After discharge from the hospital, the doctors advised him to take bed rest so as to heal the wounds. Another sum of Rs.18,000/- is awarded towards loss of future earnings on consideration of fact that it will take minimum three (03) months to heal the wounds.

20. The appellant initially admitted in Gandhi Hospital and thereafter in private hospitals wherein he had undergone a surgery as referred to above and also taken regular treatment as out-patient, for which, a sum of Rs.15,000/- is awarded under the head of transportation. As already discussed above, the appellant was treated

². (2009) 6 SCC 121

as in-patient for about five months and during the said treatment, an amount of Rs.10,000/- @ Rs.2,000/- per month is awarded towards attendant charges.

21. Though the Gandhi Hospital provides free treatment, but PW.2 - doctor has categorically deposed that the appellant purchased certain medicines which are not available in their hospital from outside, amounting to Rs.15,938/-. The appellant further claimed an amount of Rs.47,570/- incurred in People's Nursing Home where he had undergone a surgery also towards medicines, diagnostic charges, cost of surgery etc. The injuries as well as conducting surgery are not in dispute. In the said circumstances, the said amount of Rs.15,938/- plus Rs.47,570/-, making total of Rs.63,508/- rounding it off to Rs.63,500/- are awarded under the said heads. Another sum of Rs.20,000/- is awarded towards pain and suffering keeping in view the nature of injuries and the sufferance he had undergone throughout. Further, a sum of Rs.15,000/- is awarded under the head of 'extra nourishment'. Thus, in all, the appellant is entitled to Rs.4,16,300/- as compensation under the following heads:

i)	40% disability	.. Rs. 2,44,800-00
ii)	Loss of past earnings	.. Rs. 30,000-00
iii)	Loss of future earnings	.. Rs. 18,000-00
iv)	Transport Charges	.. Rs. 15,000-00
v)	Attendant Charges	.. Rs. 10,000-00
vi)	Medical expenses	.. Rs. 63,500-00
vii)	Pain and suffering	.. Rs. 20,000-00
viii)	Extra nourishment	.. Rs. 15,000-00

Total compensation		.. Rs. 4,16,300-00

Thus, the said amount of Rs.4,16,300/- (Rupees Four Lakhs Sixteen Thousand and Three Hundred Only) is awarded as compensation which is just and reasonable with interest at 7.5% per annum thereon from the date of petition till the date of realization. This Court is having power to grant just and reasonable compensation to which the appellant is entitled as held by the Apex Court in **Ramla v. National Insurance Company Limited**³.

22. In the result, the appeal - M.A.C.M.A. No.1256 of 2006 filed by the Appellant - Petitioner is allowed. Accordingly, the order and decree dated 18.01.2006 in M.V.O.P. No.263 of 2002 passed by the Motor Accidents Claims Tribunal - cum - III Additional District & Sessions Judge (Fast Track Court), Medak are set aside. The claim petition filed by the appellant before the Tribunal is allowed with costs granting an amount of Rs.4,16,300/- (Rupees Four Lakhs Sixteen Thousand and Three Hundred Only) as compensation to the appellant with interest at 7.5% per annum thereon from the date of petition till the date of realization against respondent Nos.1 and 2 jointly and severally. The appellant is directed to pay deficit court fee within a period of one (01) month from the date of receipt of a copy of this judgment. Similarly, the respondents are directed to deposit the above said amount with interest and costs within one month from the date of receipt of certified copy of this judgment. Since the accident occurred in the year 2000. The appellant is permitted to withdraw the

³. (2019) 2 SCC 192

entire amount. However, there shall be no order as to costs in the present appeal.

As a sequel, Miscellaneous Applications, if any, pending in the appeal shall stand closed.

K. LAKSHMAN, J

06th February, 2020

Note:

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