

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

M.A.C.M.A.No.357 OF 2007

JUDGMENT:

Heard learned counsel for the appellant and learned counsel for the 2nd respondent/insurance company

2. Feeling aggrieved by the order and decree dated 05.10.2006 in O.P.No.161 of 2005 passed by the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda at Suryapet (for short 'the Tribunal), the appellant/claimant preferred the present appeal.

3. Vide the aforesaid order, the Tribunal has granted an amount of Rs.16,000/- towards compensation as against claim of Rs.1,00,000/- with costs and interest @ 9% per annum from the date of petition till the date of realisation.

4. On consideration of the entire record, the Tribunal gave a finding that the accident was occurred due to contributory negligence of both vehicles and with the said finding the Tribunal further held that respondents 1 and 2 are jointly and severally liable to pay the compensation of 50% out of Rs.32,000/- which comes to Rs.16,000/- to the petitioner. It is relevant to note that this appeal is dismissed against the 1st respondent vide order 05.07.2016.

5. In the similar circumstances, the Apex Court in **Khenyei v New India Assurance Co. Ltd and others**¹ held that in case of contributory negligence, the insurance company has to pay the compensation amount and recover the same from the owner of the vehicle. To prove the injuries, the appellant/claimant filed Ex.A.2-medical certificate, Ex.A.5-

¹ 2015 ACJ 1441

disability certificate issued by the District Medical Board, Nalgonda and the appellant/claimant examined himself as PW.1.

6. As per the above said documents and deposition of PW.1 admittedly, the appellant/claimant sustained four grievous injuries in the accident. But the Tribunal has awarded only Rs.5,000/- to each of the grievous injuries. The said grievous injuries sustained by the appellant/claimant are that fracture to right knee, right foot, forearm, grievous injury to elbow apart from other injuries and fractures all over the body. Therefore, the amount of Rs.5,000/- to each grievous injury awarded by the Tribunal is meagre. In view of the above said grievous injuries, according to this Court, an amount of Rs.15,000/- to each of the grievous injury is reasonable. There are four grievous injuries, and therefore, the appellant/claimant is entitled for Rs.60,000/-. The Tribunal did not consider the medical bills on the ground that the appellant/claimant has not examined any person to substantiate the claim.

7. Insurance Company failed to disprove the same. However, Ex.A.4-bunch of medical bills shows that the appellant/claimant has incurred the said amount towards medical bills. Therefore, the appellant/claimant is entitled for Rs.7,000/- towards medical bills as claimed under Ex.A.4. The appellant/claimant is also entitled for an amount of Rs.5,000/- towards transport charges and an amount of Rs.10,000/- towards extra-nourishment.

8. It is also the contention of the appellant that he is also entitled for loss of monthly earnings since he was bed ridden for about three months due to the grievous injuries received by him in the accident. According to the appellant, he was coolie and used to get Rs.300/- to Rs.400/- per

day. But according to this Court, an amount of Rs.100/- per day shall be considered as his earning capacity i.e. Rs.3,000/- per month. Therefore, the appellant is entitled for Rs.9,000/- (Rs.3,000/- x 3) towards loss of three months earnings. In all the, appellant claimant is entitled for the compensation as specifically mentioned below, which is just and reasonable with interest @ 7.5% per annum from the date of petition till the date of realisation.

1) Four grievous injuries	Rs. 60,000/-
2) Medical bills	Rs. 7,000/-
3) Transport charges	Rs. 5,000/-
4) Extra-nourishment	Rs. 10,000/-
5) Loss of monthly earnings	Rs. 9,000/-
	Rs.91,000 /-

9. It is the specific contention of the appellant that the accident was occurred due to rash and negligent driving of the driver of the lorry bearing No. AP 28 V 1785, which fact discloses from Ex.A.1-FIR and Ex.A.3-charge sheet. There is no mention about the contributory negligence in Exs.A.1 and A.3. The 2nd respondent/insurance company did not elicit anything from PW.1 during the cross examination to prove contributory negligence. But the Tribunal held that there is contributory negligence on the part of the drivers of both the vehicles on the ground that the offence panchanama was not filed. It is relevant to note that the procedure in deciding the claims under the Motor Vehicles Act is a summary procedure. Just because, offence panchanama was not filed, the Tribunal cannot hold that there was contributory negligence in the absence of specific pleading and evidence to the said affect. In the present case, there is no pleading or specific evidence with regard to the

contributory negligence. Therefore, the accident was occurred due to rash and negligent driving of the driver of the lorry bearing No. AP 28 V 1785. The 1st respondent being the owner and the 2nd respondent, insurer of the said lorry are liable to pay the compensation jointly and severally along with interest within one month from the date of receipt of copy of this judgment after deducting the amount, if any, deposited earlier..

10. In the result, MACMA is allowed-in-part, modifying the order and decree dated 05.10.2006 in O.P.No.161 of 2005 passed by the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda at Suryapet enhancing compensation from Rs.16,000/- to Rs.91,000/- (Rupees ninety one thousand only) with interest @ 7.5% per annum from the date of petition till the date of realisation. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stands closed.

Date 30.01.2020
kvrn

K.LAKSHMAN,J