

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

MA.CMA.NO.1732 OF 2014

JUDGMENT

Vide award and decree dated 17.09.2007 passed by the court of the Chairman, Motor Accident Claims Tribunal – cum – II Additional District Judge, Warangal in O.P.No.226 of 2006, the Tribunal dismissed the claim of the claimant- injured on the ground that he did not examine the doctor who treated him and issued injury certificate. Assailing the said award and decree, the claimant filed the present appeal.

2. The case of the claimant is that he is a laborour and resident of Julywada, Hanamkonda. On 23.5.2005 he boarded an auto rickshaw bearing No. AP 1 U 3477 at Ambedkar Statue near Depot Crossroads, and was proceeding to Old Bus Depot side, and that when the auto reached near a medical shop and proceeding on the extreme side of the road, the driver of the auto drove the vehicle in a rash and negligent manner and in a high speed, and tried to avoid the accident with another vehicle, and in that process, could not control the auto, and it turned turtle, and as a result, injured fell down and the auto ran over his legs, and thus he received injuries. Immediately, after the accident, he was shifted to Dr. Surender Reddy's Hospital, Hanmakonda for treatment, where the doctor informed that the claimant received severe crush injury, and amputation was done on the same day.

3. On a complaint given by Yamsani Sravani, police registered case against the driver of the auto rickshaw Gunda Narsaiah. The police investigated into the case and filed charge sheet against the driver of the crime auto.

4. With these averments, the claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/-.

5. The owner of the auto rickshaw involved in the accident remained ex parte, and the insurer i.e., Oriental Insurance Co. Ltd., filed counter affidavit and contested the claim by denying the manner of accident pleaded by the claimant, and further contending that the compensation claimed is excessive, sought for dismissal of the claim petition.

6. The Tribunal considering the evidence of the claimant, who was examined as P.W.1, and also the copy of the charge sheet which was filed after investigation against the driver of the auto rickshaw bearing No. AP 1 U 3477, marked as Ex.A-3, held that the accident occurred due to rash and negligent driving of the driver of the crime vehicle.

7. Coming to the assessment of compensation for injuries sustained by the claimant in the accident, the Tribunal held that as

the claimant failed to examine the doctor, who treated the claimant and issued Ex.A-2 injury certificate, the oral evidence of P.W.1 and Ex.A-5, which is the disability certificate, cannot be considered and accordingly rejected the claim petition. Aggrieved by the same, the claimant filed the present appeal.

8. Heard Sri M.Ajay Kumar, learned counsel for the claimant and Sri B.Yuvaraj, learned counsel for the 2nd respondent – Insurance Company.

9. In the present case, there is no dispute that the accident occurred due to rash and negligent driving of the driver of the auto rickshaw bearing No. AP 1 U 3477.

10. With regard to injuries, the case of the claimant is that because of the accident the auto turned turtle and he fell down from the auto, and the tyres of auto ran over his legs, and he, and others received injuries, and that immediately he was shifted to Dr.Surender Reddy's Hospital, Hanamkonda for treatment, where the doctor informed that the claimant received severe crush injury, and that amputation was done on the same day.

11. In his evidence, he deposed as per the above averments, which are made in the claim petition, and got marked Ex.A-2 injury certificate, which shows that he received three injuries viz.,

(1) Compound crushed fracture both bones of right leg; (2) abrasion measuring 3 x 2 cms. on left knee; and (3) abrasion measuring 3 x 3 cms. on left elbow. The further case of the claimant is that there was amputation of right leg below knee. The claimant also examined P.W.2, who is an Orthopedic Surgeon and issued Ex.A-5 disability certificate. P.W.2 deposed that claimant is having 50% of permanent disability due to amputation of right leg below knee. In these circumstances, the issue that arises for consideration is, *whether the disability certificate issued by P.W.2, assessing the disability at 50%, as there was amputation of right leg below knee, can be relied upon to award compensation?*

12. At this stage, it is necessary to look into the law laid down by Apex Court in this regard. The Apex Court in [*Raj Kumar v. Ajay Kumar*](#), (2011 ACJ 1), in a very erudite judgment, has dealt with principles of assessment of damages in injury cases. Dealing with disability certificates the Apex Court held as follows:

“12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give ‘ready to use’ disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. ***The Tribunal may invariably make it a point to require the evidence of the***

Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.”

(Emphasis added)

13. From the above judgment of the Apex Court it is clear that mere production of a disability certificate is no proof of the extent of disability till the Doctor who issued the certificate or treated the patient is tendered for cross examination in Court.

14. In the present case, the claimant has examined P.W.2, who is an Orthopedic Surgeon and issued Ex.A-5 disability and he deposed before the court that the claimant is having 50% of permanent disability due to amputation of right leg below knee.

15. In these circumstances and having regard to the evidence of P.W.2, who issued Ex.A-5 disability certificate, and in the absence of any rebuttal evidence by the Insurance Company, I am of the considered view, the approach of the Tribunal, in rejecting the claim petition, cannot be sustained and the impugned order to the extent of rejecting the claim of the claimant cannot be sustained, and I am

inclined to grant compensation taking the disability of the claimant as 50%, as his right leg below knee was amputated. However, as the doctor who treated the injured was not examined, the injury certificate Ex.A-2 cannot be taken into consideration, and no amount can be awarded for injuries. However, as stated above, this court is inclined to grant compensation under permanent disability.

16. Learned counsel for the claimant relying on the judgment of the Apex Court reported in **SRIANTHONY @ ANTHONY SWAMY vs. THE MANAGING DIRETOR, KSRTC** (2020 ALL SCR 1403) contended that the right leg below knee was amputated and as the claimant was a labourer, the functional disability shall be taken at 75% instead of 50%. This contention cannot be countenanced for the reason that the doctor P.W.2 who issued Ex.A-5 disability certificate deposed that he sustained 50% disability, as his right leg below knee was amputated. However, it could be seen that he can perform other functions, and that he is not totally paralyzed because of the disability. Hence, even the functional disability also can be assessed only at 50%.

17. It is stated that the claimant was a labourer and as per Exs.A-1 and A-3, which are the certified copies of FIR and Charge Sheet, the claimant is shown as aged 48 years as on the date of the accident. Hence, I am inclined to take his monthly income as Rs.4,000/-, and Rs.48,000/- per annum.

18. The claimant is aged 48 years, and as per the judgment of the Apex Court in **NATIONAL INSURANCE COMPANY LTD. vs. PRANAY SETHI**¹, an addition of 25% of the established income shall be made towards future prospect. 25% of Rs.48,000/- comes Rs.12,000/-. Thus the annual income of the claimant including future prospects comes to Rs.60,000/-. For the age group of the deceased, who is 48, the appropriate multiplier as per the judgment of the Apex Court in **SARLA VERMA vs. DELHI TRANSPORT CORPORATION**², is '13'. Thus the total amount comes to Rs.7,80,000/- The disability sustained by the claimant as per Ex.A-5 certificate, which is testified by P.W.2, is 50%. Hence, the total loss of income comes to Rs.3,90,000/-.

19. Further, having regard to the facts and circumstances of the case, I am inclined to grant an amount of Rs.25,000/- towards pain and suffering, Rs.15,000/- towards attendant charges, extra nourishment and transportation, and Rs.10,000/- towards medical expenses.

20. Thus, in all, the claimant is granted an amount of Rs.4,35,000/- with interest at the rate of 7.5 per cent per annum from the date of the claim petition, till the date of realization.

21. The claimant filed Ex.A-4, attested copy of Insurance Policy Schedule of the crime auto and the same is not disputed by the

¹ AIR 2017 SC 5157

² (2009)6 SCC 121

2nd respondent – Insurance Company. Thus, it is clear that the policy of the crime vehicle, which was issued by 2nd respondent, was in force as on the date of the accident. Hence, the respondents 1 and 2 are jointly and severally liable to pay the compensation. The compensation amount shall be deposited within a period of two months from the date of receipt of a copy of this order.

22. The appeal is accordingly allowed in part.

23. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

DATE:16—11—2022
avs

M.G.PRIYADARSINI,J