THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI

M.A.C.M.A.No.4074 of 2008

JUDGMENT:

This appeal is preferred by the claimant aggrieved by the award and decree passed in O.P.No.1001 of 2004 on the file of the Motor Accident Claims Tribunal-cum-XXII Additional Chief Judge, City Criminal Court, Hyderabad, dated 20-03-2007, whereby the Tribunal held that the Insurance Company is not liable to pay compensation, and for enhancement of the compensation awarded by the Tribunal.

2. Heard Mr. M. Srinivas, learned counsel for the appellant and Mr. A. Rama Krishna Reddy, learned counsel for the respondent-Insurance Company.

3. The brief facts are that on 23-01-2004 at about 8-00 AM, when the claimant was proceeding in a jeep bearing No.AP-22U-5696 from Devara Kadra towards Mahaboobnagar side, the driver of the jeep drove it in a rash and negligent manner in high speed and lost control over the jeep and it turned turtle, due to which the claimant and the inmates of the jeep have sustained injuries and the claimant was shifted to the Government Hospital for treatment and later shifted to Kamineni Hospital, wherein he underwent several operations and became permanently disabled. He spent an amount of Rs.90,000/-towards medical expenditure and sustained loss of earnings. The claimant was aged about 34 years at the time of accident and he was earning a sum of Rs.5,000/- per month by doing lemon business and due to injuries, he lost his income source. Thus, he claimed compensation of Rs.2,00,000/- for the injuries sustained by him in the accident.

4. The respondent-Insurance Company has filed counter affidavit denying the manner of accident, rash and negligent driving on the part of the driver of the jeep and the nature of injuries sustained by the claimant. It is stated that the driver of the jeep was not having valid driving license at the time of accident.

5. The Tribunal on analyzing the oral and documentary evidence granted compensation of Rs.1,22,000/- with interest at 7.5% per annum from the date of filing of the petition till the date of deposit.

6. Learned counsel for the appellant-claimant submits that the claimant has sustained injuries i.e., abrasion over upper lip, abrasion over the nose, contusion over left eyebrow and fracture of pelvis and he underwent an operation in Yashoda Hospital on 24-01-2004 and discharged on 11-02-2004. He submits that the claimant was again admitted in Yashoda Hospital because he was expressing difficult in passing motion and pain due to defecation and he was treated from 15-03-2004 to 19-03-2004 and thereafter, he underwent an operation on 16-03-2004 and discharged from the hospital on 19-03-2004. He further submits that though the claimant has sustained grievous injuries particularly the injury of fracture of pelvis and even the doctor has opined that the claimant has sustained 25% permanent partial disability, the Tribunal has failed to consider the said disability certificate issued by P.W.3-Doctor on the ground that P.W.3 has not treated the claimant and he is not a person competent to give the said certificate and the said certificate has not been obtained from the Medical Board. Learned counsel further submits that the insurance company has denied the liability on the ground that they have not insured the vehicle owned by respondent No.1 and they have not issued any cover note bearing No.07550 with regard to the said vehicle. He submits that taking into consideration the office note of the insurance

company, the Tribunal has held that the said note is not issued by the respondent-insurance company and as such, the insurance company is not liable to pay the amount. He submits that the Tribunal has also held that the claimant has not examined respondent No.1 to establish that Ex.A-7 was issued to him by respondent No.2 through their agent and the claimant did not choose to examine the agent of respondent No.2, who has issued the original of Ex.A-7 to respondent No.2. Learned counsel further submits that with regard to issuance of cover note, there are cases pending and also a CBI enquiry was going on in this regard.

7. Learned counsel for the appellant-claimant further submits that in his evidence, R.W.1 has stated that their Divisional Office has dispensed with the system of issuing cover notes from 01-11-2022 and the cover note No.07550 series was not supplied to their Divisional Office. R.W.1 has further stated that he cannot confirm whether the said round stamp as well as signature of authorized insurer in Ex.A7 is that of respondent No.2 office or not and in the round stamp seal, it is written as United India Insurance Company and also stated that Col.No.3 from right side of Ex.B2 belongs to Code Numbers of Development Officer and in Col.No.3, the first three digit code relates to either office or the Code of Development Officer and the remaining 5 digit code is in respect of agent code. During the said period, three development officers worked in D.O.XI Office, and he does not know how many agents were working in D.O.XI Office during 24-07-2003 to 23-07-2004. The development officers are authorized to issue cover notes outside the office and the Divisional Office has dispensed with the issuance of cover note from 01-11-2022 and there is an order to that effect, which is an internal one and that order is also not filed before the Court. It is also stated in the evidence of R.W.1 that a CBI case was registered for misusing of cover notes against the

two development officers and that is why their office has dispensed with issuing cover notes. Learned counsel for the petitioner further submits that the Tribunal has failed to appreciate that the cover notes are issued by the agents and even R.W.1 has not denied that the same does not belong to the respondents and in view of the said facts, the Tribunal ought not to have held that the said cover note is not issued by the respondents and the insurance company is not liable to pay the compensation. He submits that even in the order impugned, the learned Judge has observed that the claimant has sustained pelvic injury and surgeries were done and he was treated in the hospital for three months and he has taken bed rest for another two months, but the Tribunal has failed to grant compensation for attendant benefits and for extra nourishment. He further submits that from the evidence of the doctor and other medical evidence, the petitioner has sustained the disability and just because the disability certificate was issued by the Doctor, who has not treated the claimant, is not a ground to completely discard the evidence, which is supported by medical evidence and no compensation was granted under the said heads. He also submits that the Tribunal has failed to grant compensation under future prospects and also for the loss of amenities.

8. Learned counsel for the respondent-Insurance Company submits that the said cover note was not issued by the respondent and basing on the evidence let in and as the procedure of issuing cover note was dispensed with long back, the Tribunal has rightly held that the insurance company is not liable to pay the compensation. He submits that as far as the compensation aspect is concerned, since the insurance company is held not liable to pay the same, they are not concerned with the quantum of compensation granted by the Tribunal.

9. In this factual backdrop, the point that arises for determination is whether the compensation awarded by the Tribunal to the petitioner is just and proper and whether the Insurance Company is liable to pay the compensation.

10. When it comes to the liability of the insurance company, there is no dispute about the fact that the cover notes are issued by the agents. It is the case of Insurance Company that they have issued a circular prohibiting the agents from issuing the cover notes. That is also not filed before the Court. It is also stated that a CBI case is pending with regard to this issue. RW1 has also not affectively denied the cover note which is on record. In this factual backdrop, this Court is of the considered opinion that the Insurance Company is jointly and severally liable to pay the compensation.

11. Coming to the aspect of compensation, the Court below basing on the medical evidence came to the conclusion that the claimant has sustained grievous injuries and he was hospitalized for a period of three months and thereafter, even the Tribunal has observed that he required rest for a period of two months. In the light of the same, this Court is of the view that the loss of earnings sustained by the claimant has to be considered for a period of six months. The Tribunal also held that the claimant was earning a sum of Rs.5,000/- per month at the time of accident. In view the same, an amount of Rs.30,000/- is granted to the claimant towards loss of earnings for a period of six months. As far as the disability is concerned, the Tribunal held that as per the evidence of doctor, the claimant is not able to bear weights on his left lower limb with limping and he cannot sit or squat and cannot walk for prolonged periods, that itself shows that there is a disability and in view of the said injury, the petitioner is incapacitated to do certain works. When the

medical evidence supports the case of the petitioner, the Tribunal should have considered the disability aspect.

12. Considering the facts of the case and the injuries sustained by the claimant, this Court is of the view that the permanent disability of the petitioner can be considered at 10% and the income of the petitioner at Rs.5,000/-per month. As the claimant was aged about 34 years at the time of accident, the multiplier would be ‘16’ and the compensation towards permanent disability would come to Rs.5,000+2000(40% future prospects)x12x16x10/100+10/100=1,34,400/-. Further, the Tribunal has already granted an amount of Rs.71,155/- towards medical expenses as claimed by the claimant and the same is an adequate amount. As far as the attendant charges are concerned, the Tribunal has not granted any compensation. As the claimant was hospitalized for a period of three months and he has undergone rest for another two months, this Court is of the view that an amount of Rs.10,000/- is sufficient towards attendant benefits, for pain and suffering an amount of Rs.40,000/- was already granted by the Tribunal. Under the head of extra nourishment an amount of Rs.10,000/-, transportation an amount of Rs.5,000/- is a just amount Under the head of loss of amenities, no amount was granted by the Tribunal and in the light of the injuries sustained by the claimant, an amount of Rs.20,000/- is granted. In total, the compensation of Rs,.3,20,955/- is granted to the claimant for the injuries sustained by him in the accident.

13. In the light of the above discussion, the appellant-claimant is entitled for compensation on the following heads;

1.	Loss of income due to disability (Rs.5,000/-+2000/- 40% future prospectsx12x16x10/100)	--	Rs.1,34,400/-
2.	Loss of earnings	--	Rs.30,000/-
3.	Medical expenses	--	Rs.71,555/-
4.	Attendant benefits	--	Rs.10,000/-
5.	Pain and suffering	--	Rs.40,000/-
6.	Extra nourishment	--	Rs.10,000/-
7.	Transportation	-	Rs. 5,000/-
8.	Loss of amenities	--	Rs. 20,000/-
			Rs.3,20,955/-

14. In the result, the Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.1,22,000/- to Rs.3,20,955/-.

(a) The enhanced amount shall carry interest at 7.5% per annum from the date of petition till the date of realization.

(b) The claimant shall pay the Court fee on the enhanced amount.

(c) The respondent shall deposit the compensation within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit and on such payment of Court fee, the claimant is permitted to withdraw the compensation without furnishing any security. No order as to costs.

15. Miscellaneous petitions, if any pending in this appeal shall stand closed.

SMT LALITHA KANNEGANTI, J

24th January, 2023.
sj