**HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**M.A.C.M.A.No. 146 of 2013**

**J U D G M E N T:**

This is an Appeal preferred by the claimant questioning the Award dated 11.12.2012 in O.P.No. 1773 of 2010 on the file of the Motor Accidents Claims Tribunal-cum-IX Additional Chief Judge (Fast Track Court), City Civil Court at Hyderabad.

2. The case of the claimant is that on the date of accident, the claimant was doing dairy business and was earning Rs.5,000/- per month. It is stated that on 15.05.2010 at about 09.30 p.m., the claimant was returning to his village from Toopran on a motor bike. Near Donthi Culvert, one auto bearing Registration No. AP 10 V 0298 came in opposite direction from Narsapur and dashed the motor bike, as a result, the claimant fell down and sustained fracture to his right ankle, right thigh, right knee and other serious injuries and multiple fractures all over his body. Immediately, he was shifted to Yashoda Hospital and was admitted as inpatient. According to the claimant, he spent more than Rs.2,00,000/- towards his medical treatment. Hence, he claimed Rs.5,00,000/- as compensation.

3. The Insurance Company filed the counter-affidavit denying the averments in the Claim Petition. It is stated that the driver of the auto had no valid driving licence, hence, the Insurance Company is not liable to pay the compensation.

4. The claimant in support of his case, examined P.Ws.1 to 3 and got marked Exs.A1 to A5. On behalf of the Insurance Company, Ex.B1 attested copy of the Insurance policy was marked.

5. The Tribunal after going through the entire material and the evidence placed on record, dismissed the Claim Petition on the ground that the claimant sustained injuries on 15.05.2010 at 09.30 p.m. and he joined in the hospital on the next day at 10.30 a.m.. Discharge summary filed by the claimant also shows that he joined in the hospital on 16.05.2010 and he sustained injuries in the morning of 16.05.2010. Further, he has not even stated before the Court that he sustained injuries in the accident and also complaint was given on 20.05.2010 which was five days after the accident. The Court below has disbelieved the case of the claimant and also observed that unexplained delay of five days in giving the complaint to the police was because of manipulation to involve the crime auto in the accident with a view to claim compensation from the Insurance Company. Accordingly, the Claim Petition was dismissed.

6. Learned counsel for the claimant Sri T. Vishwarupachary submits that it is the specific case of the claimant that he sustained injuries on 15.05.2010 at 09.30 p.m., when the auto hit the motor bike on which he was travelling as pillion rider at Toopran. He submits that the complaint was given by the wife of the claimant on 20.05.2010. In the said complaint, it was mentioned that when her husband was coming from a marriage on 15.05.2010, the driver of the auto came in a rash and negligent manner and hit the bike, the husband of the complainant sustained fractures to right ankle, right thigh and right knee and other multiple fractures. At that time, the auto driver has promised that he would pay medical expenses, as such, they kept quiet without giving the complaint. Later, when the auto driver failed to pay the said amount, he had come up with the compliant. Learned counsel submits that thereafter the police have registered the same as Crime No. 40 of 2010 and after full-fledged enquiry filed a charge sheet i.e. C.C.No. 517 of 2010. He submits that that itself shows that the accident had taken place and it supports the case of the claimant that the delay in giving the complaint after five days is mentioned in the complaint itself. It is further submitted that the Tribunal had examined the doctor and as per the evidence of the doctor, he sustained disability. That aspect was also not taken into consideration. Further, the claimant had spent Rs.1,00,073/- towards medical expenses and

in this regard, P.W.3 who is the Accounts in-charge of Yashoda Hospital was examined. He deposed that they have received the said amount. According to the learned counsel, the Tribunal without taking all these aspects into consideration had dismissed the claim petition.

7. Learned Standing Counsel for the Insurance Company Sri A. Ramakrishna Reddy submits that if at all the claimant sustained any injuries in the accident that occurred on 15.05.2010, he would have given a complaint to the police immediately. He would have stated so when he was admitted in the hospital and a medico legal case would have been registered. He submits that without giving the complaint and mentioning that he sustained injuries in the accident, as an after-thought, to claim compensation, the claimant had come up with the said plea stating that he was hit by an auto. Learned Standing Counsel submits that discharge summary which was filed by the claimant shows that as an after-thought, the complaint was filed to get the compensation. He submits that when a petition is filed seeking compensation, the burden lies on the claimant to prove that the accident occurred and in this case, discharge summary, FIR and narration of facts show that such accident had taken place on 15.05.2010. He submits that had it been a case of accident, he would have been stated the true facts on that date itelf. He

submits that the Tribunal has rightly dismissed the Petition filed by the claimant as he failed to prove the accident.

8. According to the claimant, the accident had occurred on 15.05.2010 at about 09.30 p.m. and the complaint was lodged on 20.05.2010. As pointed out by the learned Standing Counsel for the Insurance Company, there is a delay of five days in giving the complaint. At this juncture, it is appropriate to look at the contents of the complaint. In the complaint, wife of the claimant had stated that the accident had occurred on 15.05.2010, however as the auto driver promised to pay the medical expenses, they have kept quiet. As the claimant had to undergo surgery and as the auto driver did not come forward to pay the amounts, they have come up with the present complaint. Later the police registered the FIR and after thorough investigation, filed the charge sheet. According to the Insurance Company, the said charge-sheet is very cryptic one where there is no detailed investigation that is done by the police. In the considered opinion of this Court, the delay of five days in giving the complaint is answered by the claimant in the complaint itself given by them. Because of the said reason, the claimant might have informed the respondents about the accident as the same would have been referred as MLC and the other consequences would follow, hence, just because the complaint is given after five days, and in the discharge summary, it was not mentioned by the

hospital authorities about registration of medico legal case. On these grounds, it cannot be concluded that no accident has taken place. Hence, the finding of the Tribunal on this ground is not correct. This Court therefore comes to the conclusion that that the accident had taken place.

9. Coming to the quantum of compensation, according to the doctor, the claimant sustained fracture to right distal end femur which was grievous injury and he sustained disability. In proof of the same, the claimant had filed disability certificate and the evidence of the doctor on the said disability aspect was also not considered, as such, this Court is not inclined to accept the contention of the learned counsel for the claimant that the claimant has sustained the disability. In his chief-examination, P.W.3 stated that he was working as a Billing in-charge in Yashoda Hospital, Secunderabad since five years and the claimant was admitted on 16.05.2010 and discharged on 21.05.2010. The amount of Rs.1,00,073/- was paid towards his treatment by way of cash and Ex.A5 is the final bill issued by their hospital for Rs.1,28,660/-. However, when it comes to cross-examination, it is stated that it is true that there are no receipts in support of payment of Rs.1,00,073/-. Then the next sentence is “It is true we issued receipts for the payment of the bills”. It appears that the learned Standing Counsel for the Insurance Company basing on this statement submitted that there are no payments in support of

the claim. It appears instead of typing it “it is not true” it appears to be a typographical mistake. When the first three sentences are read together, there is no connection between the statements that were given as per the evidence of P.W.3 and basing on Ex.A5, the petitioner has paid an amount of Rs.1,00,073/- towards treatment.

11. The claimant is entitled to the compensation under the following heads:

| Head | Compensation awarded |
|---|---|
| (1) Two fracture injuries | Rs.80,000/- |
| (2) Medical bills | Rs.1,00,073/- |
| (3) Pain and suffering | Rs.10,000/- |
| (4) Attendant charges | Rs.10,000/- |
| (5) Extra nourishment | Rs.10,000/- |
| (6) Transport | Rs.10,000/- |
| (7) Legal expenses | Rs.10,000/- |

12. In the result, the Appeal is partly allowed awarding compensation of Rs.2,30,073/- as under:

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

(b) The Insurance company shall deposit the amount within a period of eight weeks from the date of receipt of copy of judgment. On such deposit, claimant is entitled to withdraw the entire amount without furnishing the security.

Pending miscellaneous petitions, if any, shall stand closed.

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LALITHA KANNEGANTI,J

21st February 2023

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