
(2006) 09 AP CK 0087

In the Andhra Pradesh High Court

Case No : C.M.A. No"s. 2170 of 1999 and 2597 of 2000

Butha Prasad

APPELLANT

Vs

Shaik Jafifulla and Another

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 149(2), 163A, 166

Citation : (2007) ACJ 1428 : (2006) 6 ALT 426

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : B. Ranganatha Rao, for the Appellant; N. Subba Rao, for Respondent No.1, for the Respondent

Judgement

P.S. Narayana, J.—The claimant/appellant in M.V.O.P. No. 553/95 on the file of I Additional District Judge, Guntur preferred the Appeal C.M.A. No. 2170/99 praying for enhancement of compensation. Likewise, the Oriental Insurance Company Limited, 2nd respondent in the aforesaid O.P. preferred C.M.A. No. 2597/2000 questioning awarding of compensation on the ground that the same is excessive. However, it is needless to say that in the light of the provisions of Sections 173 and 149(2) of Motor Vehicles Act, 1988 and also in view of the decisions National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , Chinnama George and Others Vs. N.K. Raju and Another, and Abani Mahato Vs. Kanchan K. Sinha and Others, the Insurance Company is not entitled to maintain an Appeal unless the conditions as specified u/s 173 read along with Section 149(2) of the Act aforesaid are satisfied.

2. Coming to the facts of the case, the appellant/claimant in C.M.A. No. 2170/99 hereinafter referred to as claimant, filed a nonfatal accident claim for Rs. 2,50,000/- under Sections 140 141 and 166 of the Act aforesaid. It is stated that the appellant/claimant was of 30 years old and was a steward in M/s. Blooming Dale, Lakshmipuram, Guntur on the date of the accident. On 21.6.1995 at about 11 p.m. while the appellant/claimant was returning home after duty, the driver of

the offending auto bearing registration No. AIV 7956 dashed against the appellant/claimant from behind in the 5th Lane, Brodipet, Guntur. The accident would not have occurred but for the rash and negligent driving of the driver of the auto who drove the auto carelessly and without blowing horn. The appellant/claimant was taken by the auto driver to Government General Hospital, Guntur where he was inpatient for a period of seven days. The right thigh of the appellant/claimant was operated upon at the hospital and he had to take bed rest for four months and he is not able to walk normally even now. Owing to the accident the appellant/claimant lost his ability. The appellant/claimant initially made a claim of Rs. 1,00,000, but when it was found that he requires further treatment by artificial hip replacement, he made a claim for Rs.2,50,000/-.

3. The 1st respondent in the M.V.O.P. remained ex parte. The 2nd respondent entered appearance and denied the claim. The following Issues were settled by the Tribunal.

1. Whether the accident took place due to rash and negligent driving of the driver of Auto rickshaw No. AIV 7956?
2. To what compensation if any the petitioner is entitled to and from whom?
3. To what relief?

The learned Judge on appreciation of evidence of P.W. 1 and P.W. 2 and also Exs. A-1 to A-9 had awarded compensation of Rs. 61,200/- for loss of earning power and permanent disability and Rs. 60,000/- towards compensation for future medical expenses and replacement of hip joint, compensation of Rs. 10,000/- for pain and suffering, Rs. 3800/- for medical expenses, and in total granted Rs. 1,35,000/-. In view of the findings recorded on Issues 1 and 2, the O.P. was allowed in part with proportionate costs granting compensation of Rs. 1,35,000/- to the appellant/claimant and directed respondents 1 and 2 to jointly and severally discharge the liability and the same to be deposited together with interest @ 12% per annum from the date of petition till the date of deposit within one month from the said date and on such deposit the appellant/claimant was entitled to withdraw Rs. 55,000/- at the first instance and the balance shall lie in fixed deposit in a Nationalised Bank for a period of 30 months at the end of which it shall be paid to the appellant/claimant with accrued interest. Advocate fee was fixed at Rs. 600/-. The matter was carried by way Appeals and in the Appeal filed by the Insurance Company i.e., C.M.A. No. 2597/2000 an interim order was granted and it is stated that the same had been complied with and the amount also had been withdrawn. Strong reliance was placed on G.V. Sathya Sesha Sai v. M. Siva Leela and Ors. 1988 (1) ALT 14 and further submissions were made that the calculation in relation to the multiplier is not in accordance with the Second Schedule read along with Section 163A of the Act aforesaid. The relevant portion of the Second Schedule in relation to Disability in non-fatal accidents reads as hereunder:

(a) In case of permanent total disablement the amount payable shall be arrived

at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

4. In view of the appreciation of evidence, inasmuch as the factual aspects are not in serious dispute, the same need not be discussed at length. The learned Counsel for the appellant/claimant contended that the Tribunal erred in deducting 1/3rd of the income of the appellant/claimant to wards his personal expenses while computing the quantum of compensation as the said principle applies to the cases arising out of fatal accidents and not to the case like the one on hand. It is stated that in the light of the evidence available on record and also taking into consideration the age of the appellant/claimant which is not in dispute, the annual income of the appellant/ claimant at the time of the accident being Rs. 18,000/- per annum and the same when multiplied with 17, being the appropriate multiplier as per the provisions of the Act aforesaid, and if the same is calculated in accordance with the relevant provisions of the Schedule referred to supra, instead of Rs. 61,200/-awarded by the Tribunal under the caption of compensation for loss of earning power and permanent disability, the appellant/ claimant would be entitled to Rs. 91,800/- i.e., $\text{Rs. } 18,000/- \times 17 = 3,04,000/-$; when the same is reduced to 30% being the disability suffered by the appellant/ claimant in the accident as deposed by P.W. 2, the Doctor the amount comes to Rs. 91,800/-.

5. Accordingly in the light of the provisions referred to supra, the award made by the Motor Accidents Claims Tribunal, Guntur is hereby modified to the extent of awarding Rs. 91,800/- instead of Rs. 61,200/- towards compensation for loss of earning power and permanent disability. Except making this modification in all other respects the award of the Tribunal is hereby confirmed. Accordingly the Appeal filed by the claimant i.e., C.M.A. No. 2170/99 is partly allowed to the extent indicated above, On enhanced compensation the appellant/claimant in C.M.A. No. 2170/99 is entitled to interest @ 7.5% p.a. The Appeal C.M.A. No. 2597/2000 filed by the Insurance Company is hereby dismissed.