

(2007) 07 AP CK 0064

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 405 of 2001

Mohd. Moin

APPELLANT

Vs

The Branch Manager, United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:

Citation : (2007) 5 ALD 819

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : K. Venkat Ram Reddy, for the Appellant; N.V. Jagannath, for the Respondent

Judgement

G.V. Seethapathy, J.—This appeal is directed against order dated 16.10.2000 in O.P. No. 787 of 1996 on the file of Motor Accidents Claims Tribunal-cum VII Additional Chief Judge, City Civil Court, Hyderabad (in short, "the tribunal"), wherein the claim of the appellant was allowed in part awarding compensation of Rs. 16,000/- with interest at 4% per annum from the date of the petition.

2. The appellant filed the claim application before the tribunal seeking compensation of Rs. 80,000/- on account of the injury sustained by him in a motor vehicle accident that occurred on 3.3.1996. According to the claimant, on that day, while he was returning to Vasavi Studio, at about 3 p.m., an auto bearing No. ADT 4385 came from Masab Tank side towards Mehdipatnam with high speed and in a rash and negligent manner and dashed against the claimant resulting in multiple injuries to the claimant. The claimant was shifted to Osmania General Hospital for treatment. A case in Crime No. 52 of 1996 was registered against the driver of the auto by Humayun Nagar police.

3. The first respondent-owner of the auto remained ex parte. The second respondent-insurer filed a counter opposing the claim and denying their liability to pay compensation.

4. On the strength of the pleadings, the tribunal framed the following issues:

- 1) Whether the accident involving the petitioner and auto No. ADT 4385 was on account of the rash and negligent driving of the said auto by its driver?
- 2) Whether the petitioner sustained the injuries mentioned in the petition and incurred any permanent disability?
- 3) Whether the petitioner is entitled to any compensation and if so, to what amount and from whom?
- 4) To what relief?

5. PWs. 1 and 2 were examined and Exs. A-1 to A-7 were marked. No oral evidence was adduced by the respondents. Ex. B-1 copy of the policy was marked.

6. On a consideration of the evidence on record, the tribunal gave a finding on issue No. 1 that the accident occurred due to the rash and negligent driving of auto bearing No. ADT 4385 by its driver. On issue No. 2, the tribunal held that the claimant sustained injuries in the accident and they have resulted in permanent disability to the extent of 20%. On issue No. 3, the tribunal held that the claimant is entitled to a compensation of Rs. 16,000/-. Accordingly, an award was passed for the said amount with interest at 4% per annum from the date of the petition.

7. Not satisfied with the award, the claimant preferred the present appeal.

8. Arguments of the learned Counsel for the appellant and respondent are heard. Records are perused.

9. Learned Counsel for the appellant contended that the amount awarded by the tribunal in a sum of Rs. 7,000/- each for the two fracture injuries and Rs. 2,000/- towards pain and suffering is low and the tribunal failed to award any compensation towards medical expenses and other expenses incurred in connection with the treatment and also for the permanent disability.

10. Learned Counsel for the respondents, on the other hand, contended that the appeal itself is not maintainable against the insurer, as the appeal was dismissed against the first respondent-owner of the vehicle for default. He further contended that even otherwise, the amount of Rs. 16,000/- awarded by the tribunal is just and reasonable.

11. The finding of the tribunal that the accident occurred due to the rash and negligent driving of the auto by its driver has become final as the same is not assailed by way of any appeal. The questions, which arise for consideration in the present appeal is whether the appeal is not maintainable in view of dismissal of the same as against the first respondent-owner and whether the amount of Rs. 16,000/- awarded by the tribunal needs to be enhanced?

12. The award was passed by the tribunal against the owner as well as the insurer. As can be seen from the record, the owner of the vehicle remained ex

parte and did not choose to contest the claim. The finding recorded as against the owner of the vehicle fastening liability on him because of rash and negligent driving of the auto by its driver has become final, as the same is not challenged by way of any appeal. The present appeal is filed by the claimant seeking enhancement of the compensation. Inasmuch as the finding regarding fastening of liability on the owner has become final, the fact that the appeal is dismissed against the owner of the vehicle for non-prosecution is immaterial.

In a decision in *Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others*, a Division Bench of this Court held:

Even if the appeal is dismissed against the owner of the vehicle, the question of statutory liability of the Insurance Company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the Insurance Company at the appellate stage in the cases wherever the Tribunal recorded a finding that the accident has taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the Insurance Company.

13. Learned Counsel for the respondent relied upon a decision in *Magadri Satyanarayana Vs. B. Jayaramarao and others*, , wherein it was held that:

Order of the tribunal has become final as against the owner-insured and unless there is a decree and finding binding on the owner-insured, the insurance company cannot be made liable.

14. In the above case, the claim application was contested by the insurer, whereas, the owner and driver remained ex parte. After enquiry, the tribunal dismissed the claim application against all the respondents, i.e., driver, owner and the insurer. Aggrieved by the same, the claimant preferred appeal against the insurer alone and without impleading the owner and driver on the ground that they remained ex parte before the tribunal. Thus, there was no finding or decree passed against the owner of the vehicle, as the claim application itself was dismissed by the tribunal. Under those circumstances, it was held that the owner was also a necessary party to the appeal and without impleading him, the appeal against the owner was not maintainable. The said decision is not applicable to the facts of the present case for the simple reason that the claim application in the present case was in fact allowed both against the owner and also driver. The owner has not challenged the finding of the tribunal that the accident occurred due to rash and negligent driving of the auto by its driver and thereby fastening the liability on the claimant. The said finding has since become final. A decree for payment of compensation is also passed by the tribunal, which is not challenged by the owner. Under those circumstances, the dismissal of the appeal as against the owner for default is of no consequence as the appeal is filed only for enhancement of the compensation. The appeal is therefore held to be maintainable.

15. Regarding the quantum of compensation, according to PW-1, he suffered compound fracture of left leg and also fracture of clavicle bone and he was admitted in Osmania General Hospital where he underwent treatment as inpatient for four days. It is also in his evidence that because of heavy rush in the hospital, he was discharged and subsequently, he continued treatment as outpatient for three months. PW-2, Assistant Orthopaedic Surgeon of Osmania General Hospital, testified that he examined PW-1 on 3.3.1996, i.e., on the same day of the accident and found fracture of scapula and fracture of both bones of left leg, which are grievous injuries besides four other simple injuries. He issued Ex. A-5 discharge card. It is also in his evidence that as a result of the injuries, there has been shortening of the left leg by 2 cms., with restricted movement of the ankle, which amounts to 20% permanent disability.

The medical evidence of PW-2 coupled with the injury certificate Ex. A-3, medical certificate Ex. A-4, discharge card Ex. A-5 and Ex. A-6, O.P. Ticket and Ex. A-7 Medical report go to show that the claimant sustained two fractures one on the left leg and the other one on the clavicle and he underwent treatment as inpatient in Osmania General Hospital for four days. Having regard to the nature of the injuries and the treatment undergone by him, it is considered just and reasonable to expect that the claimant must have incurred considered expenditure in connection with the treatment. There is however no documentary evidence corroborating the testimony of PW-2 regarding the nature and extent of permanent disability spoken to by him. The claimant has not produced any certificate of disability issued by PW-2 or any other medical expert. In the absence of any such documentary evidence, the oral testimony of PW-2 that the injuries have resulted in permanent disability to the extent of 20% does not merit any consideration. Hence, the question of estimating compensation towards loss of earning capacity on account of permanent disability does not simply arise.

16. The tribunal awarded a sum of Rs. 7,000/- each towards fracture injuries and Rs. 2,000/- towards pain and suffering, which amounts are considered to be on the low side. Having regard to the nature of the injuries sustained by the claimant and also the length of treatment undergone by him, it is considered just and proper to award a sum of Rs. 10,000/- each for the two fracture injuries and Rs. 1,000/- for the four simple injuries. It is also considered just and proper to award a sum of Rs. 5,000/- towards pain and suffering and Rs. 5,000/- towards medical expenses. The claimant is also held entitled for a sum of Rs. 2,000/- towards extra nourishment, Rs. 2000/- towards transport charges, and Rs. 2000/- towards attendant charges, as he must have necessarily engaged the services of an attendant to assist him during his hospitalization and subsequently having regard to the fact that he suffered fracture not only on the scapula but also on the left leg, which must have immobilized him. Under those circumstances, the claimant is held entitled for a total compensation of Rs. 40,000/-. However, the interest awarded by the tribunal at 4% is ridiculously low and it is considered just and proper to award interest at 9% per annum from the

date of the petition.

17. In the circumstances and for the reasons stated above, it is held that the claimant is entitled for a total compensation of Rs. 40,000/- with interest at 9% per annum from the date of the petition. The award dated 16.10.2000 passed by the tribunal in O.P. No. 787 of 1996 is modified accordingly.

18. In the result, the appeal is allowed in part to the extent stated above. No order as to costs.