

(1991) 10 AP CK 0003

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 753 of 1988 and Cross Objections and Civil Miscellaneous Petition 18898 of 1989

M/s. United India Insurance Co.

APPELLANT

Vs

Shaik Saibaqtulla and Others

RESPONDENT

Date of Decision : 05-10-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 96, 96(2)

Citation : AIR 1992 AP 124 : (1991) 3 ALT 400

Hon'ble Judges : Upendralal Waghray, J; D.J. Jagannadhra Raju, J

Bench : Division Bench

Advocate : S. Hanumaiah, for the Appellant; Mangu Venkata Rao and T. Bheemsen, for the Respondent

Judgement

D.J. Jagannadha Raju, J.—This appeal is filed by the third respondent, the Insurance Company, in M.O.P. No. 14 of 1984 on the file of the First Additional District Judge-cum-Motor Accidents Claims Tribunal, Visakhapatnam. In an accident that took place on 17-7-1983 at about 8-30 p.m. near C.R. Reddy Square, Waltair, Uplands, the petitioner in the O. P. was injured as result of which he received several injuries and a total dislocation of the left hip-joint. He claimed a compensation of Rs. 3,40,000/-. The Tribunal, after considering the entire case, awarded Rs. 3,30,000/- as compensation with interest at 12% per annum from the date of the application with a direction that, Rs. 7,500/- paid as interim compensation should be deducted from the amount payable. Aggrieved by the same, the Insurance Company filed the present appeal.

2. In this appeal Sri S. Hanumaiah, the learned counsel appearing for appellant-respondent No. 3, contends that the Tribunal committed a mistake in awarding Rupees 3,30,000/- out of Rs. 3,40,000/- claimed. The Tribunal proceeded on the assumption that the permanent disability is 100%, while, in fact, the medical evidence shows that it is only 65%. He also contends that the accident took place as a result of contributory negligence on the part of the petitioner who was

riding the scooter. The accident took place as a result of the petitioner's scooter trying to overtake the jeep. No deduction has been given for the contributory negligence on the part of the petitioner. Mr. Hanumaiah further contends that on the whole, the amounts awarded are highly excessive and they have no bearing to the reality of the case and the previous decisions relating to such injuries.

3. The cross-objections is filed by the claimant claiming the amount of Rs. 10,000/- which was disallowed in the O.P. and 12% per annum interest from 6-1-1984 to 3-3-1988, the date of the decree.

4. The G.P.A. holder of the petitioner, who is now said to be in the United States of America, has filed the petition C. M. P. No. 18898 of 1989, for amending the O.P. and for claiming additional compensation to a tune of Rs. 14,04,287-50 together with interest thereon on the ground that with a view to get complete cure, the petitioner was taken to America and he spent a lot of money and the medical authorities in America have certified that an expenditure of Rs. 41,71,437/- was incurred which is equal to Rs. 2,50,550/-. According to the doctors, 80% of the medical bills should be paid by the Insurance Company and the balance of 20% should be borne by the petitioner. The present claim is made in the petition for amending the prayer so that Rs. 8,14,287.50 should be paid as medical expenses, Rs. 1,60,000/- as incidental expenses during treatment, Rs. 30,000/- for air travel and Rs. 1,00,000/- as compensation for pain and suffering and Rs. 3,00,000/- as compensation for continuing permanent disability as well as loss of earnings. Thus a total amount of Rs. 14,04,287-50 is claimed.

5. This petition for amendment is resisted on the ground that there is no provision of law to countenance a claim of this type which is made long after the O.P. was filed and long after the limitation period for making the claim had expired. It is also contended that the so-called expenditure is not immediately connected with the accident and after having had full treatment in India and after having recovered all the expenses, with a view to get complete cure, he had gone to United States and spent money much against the medical advice which was to the effect that the legs should be amputated. The Insurance Company cannot be mulcted with such an amount. The petition is not maintainable.

6. In this appeal filed by the Insurance Company, Mr. M. Venkata Rao, appearing for the respondent-claimant, contends that the Insurance Company is not entitled to raise the plea of quantum of damages. It has only to indemnify what has been awarded against R. 1 and R. 2, The plea of contributory negligence cannot be raised at the stage of appeal, because there was no issue framed and no finding recorded on that aspect. He further contends that u/S. 96(2) of the Motor Vehicles Act (hereinafter called "the Act"), pleas that can be raised by the insurer are limited. He cannot raise any pleas in the appeal which are not permitted by law. Mr. Venkata Rao further contends that the amendment should be allowed. The courts have held that even at the stage of appeal or second appeal, amendment of the original O.P. can be made. In the present case, the

expenditure incurred for treatment in America is the direct result of the accident. The Insurance Company is bound to pay that amount. He also claims that the cross-objections should be allowed and the Rs. 10,000/- which was disallowed by the court should be granted.

7. The points for consideration in these proceedings are as follows:

(i) Whether the appellant is not entitled to claim that the accident is a result of contributory negligence of the petitioner, the driver of the scooter?

(2) Whether the quantum of compensation awarded can be questioned by the insurer?

(3) Whether the cross-objections should be allowed?

(4) Whether the petition for amendment of the O.P. can be allowed in the particular circumstances of this case?

Point No. 4:

The fact remains that the injured underwent several operations at Visakhapatnam and subsequently at Madras in Vijaya hospital and the two doctors, who attended on him, have given elaborate evidence regarding the injuries suffered and the permanent disability which he would be suffering throughout. According to P.W. 2 Dr. Kailasa Rao, who performed three operations at Visakhapatnam, the permanent disability is fixed at 65% and according to P.W. 4 Dr. Mohandas, who conducted the operation at Madras for the replacement of the right hip, he categorically stated that he could not do anything to the left tibia and that the petitioner will have restriction of the movement in the knee and he cannot sit on Indian toilet throughout his life and he cannot squat on the floor cross-legged and he was also advised not to sleep on the operated side to preserve the life of the artificial joint. He has a chronic infection to his left leg and that it may flare up on and off and it is only local infection. On the basis of the extensive injuries suffered and on the basis of the extensive permanent disability suffered, the court granted a total compensation of Rs.3,30,000/-.

8. Even according to the petition filed for amendment, the petitioner went to U.S.A. for further treatment hoping that he will have complete or near complete cure. In fact, the original medical advice was for complete amputation of the left leg. Subsequently they went on performing five operations on different occasions and a huge expenditure was incurred. After he was completely treated in India, if the patient thinks that he can go to any other country for treatment, he should have taken insurance for treatment in foreign countries. He has not done that. As far as the injury suffered by him in India is concerned, the disability, pain and suffering and the cost of treatment has already been compensated. In such circumstances, the question is whether the present petition for amendment of the O.P. can be allowed. The only authority which is in support of the petitioner is Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others, . In this decision, the court dealing with rights in properties which have changed due

to various statutory changes and due to death of parties held that an amendment of the written statement in appeal can be permitted. The court observed in paragraph 12 as follows:

"Even if the assertions made in the application for amendment of the written statement are found to be true, the appellant could not have non-suited the respondent during the lifetime of Smt. Rajrani. The gift was valid during her lifetime. Her death gives a fresh cause of action to the appellant who claims to be her next reversioner. It appears to us that it will be just and proper to allow the amendment sought for. It will shorten litigation."

9. This principle cannot be applied to a case of claim of compensation under the Motor Vehicles Act. Under the Motor Vehicles Act, there is no provision for amending the O.P. after the period of limitation for filing the O.P. Similarly there is no provision or rule which allows an O.P. to be amended after the O.P. is decided. The facts which are discovered subsequently cannot form the basis for seeking an amendment of the O.P. Another decision relied upon by the claimant's counsel is Anand Kumar Jain Vs. Union of India (UOI) and Another, . In this decision, the permanent disability of 50% was discovered after filing the original claim. Then amendment was sought for, for enhancement of the original claim. This was filed while the O.P. was still pending. Though the Tribunal and the High Court negated it, the Supreme Court, while allowing the amendment to the O.P., directed the respondents to file supplementary written statements and then get along with the trial. In the present case, the facts are totally different. The claim has been adjudicated and compensation awarded. The injured, on his own, went to United States with a fond hope that he can have a full cure and underwent costly treatment. We are unable to understand how such remote actions can give rise to a cause of action for the injured-claimant to seek amendment of the O.P. If the injured petitioner feels that he is entitled to relief, he has necessarily to file a fresh suit and claim the damages or if he thinks that a fresh petition is maintainable, he should file a petition and seek his remedy. It should also be remembered that the present amendment petition which was filed on 6-10-1989 is hopelessly barred by time because the accident took place on 17-7-1983 and the claim has been adjudicated finally by the court on 3rd March, 1988. We are of the view that the amendment sought for cannot be allowed and C.M.P. No. 18898 of 1991 has to be dismissed.

Points 1 to 3 :

In the pleadings in the O.P. it was clearly stated that the scooter ATV 5144 ridden by the claimant was trying to overtake the jeep ATV 4563. The jeep turned towards the right without proceeding to the C.R. Reddy traffic circle and then taking a turn round the traffic circle. As a result of the jeep taking a turn to the right suddenly, the accident took place. If the jeep had proceeded normally, it would have taken a turn after a distance of 100 yards at the C.R. Reddy Traffic Circle and there was no possibility for the accident taking place. In such circumstances, it cannot be said that there is a contributory negligence on the

part of the driver of the scooter simply because the accident took place while the scooterist was trying to overtake the jeep. It should be remembered that though a plea was raised in the counter, no point for determination was framed by of the Tribunal and no finding was recorded about contributory negligence. That apart, it is not open to the Insurance Company to raise such a plea.

10. It is now well-established that an insurer cannot take pleas beyond the scope of S. 96(2) of the Act. *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, is an authority for this. It should be remembered that it is not open to the Insurance Company to question the quantum of compensation. *Reddipilli Chinna Rao and Vs. Reddi Lorudu and Others*, which is a Division Bench decision is an authority for this proposition.

11. The injured person, a research scholar, in his prime of youth, has suffered immense injury and damage and he became a complete cripple and all his prospects in life have been damaged. In such circumstances, the Tribunal rightly awarded compensation on a liberal scale for the permanent disability and the pain and suffering the claimant has suffered. Awarding of compensation of Rs. 3,40,000/-, according to us, is quite justified on the facts of this case. Though in the process of reasoning, there might be a few defects, we are not inclined to countenance the claim of the appellant on purely technical grounds. We hold that the quantum of compensation cannot be questioned by the Insurance Company and that the compensation allowed is proper. As regards the cross-objections, it should be remembered that the petitioner never felt aggrieved by the award and only after the appeal is filed by the Insurance Company, he has come forward with the cross-objections. Judging the facts of the entire case, we do not find any justification to interfere with the award. The cross-objections do not merit any consideration. We hold points Nos. 1 to 3 accordingly.

12. In the result, the appeal, cross-objections and C.M.P. No. 1S898 of 1991 are hereby dismissed. Each party to bear its own costs.

13. Appeal dismissed.