

(2004) 03 AP CK 0132
In the Andhra Pradesh High Court

National Insurance Co. Ltd.	Vs	APPELLANT
B. Rama Goud and Others		RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 173

Citation : (2005) 2 ACC 70

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Judgement

C.Y. Somayajulu, J.—Since both these appeals arise out of O.P. 31 of 1991 on the file of the Court of Motor Accident Claims Tribunal-cum-District Judge, Adilabad, they are being disposed of by a common judgment.

2. For the sake of convenience, the parties would be referred to as they are arrayed before the Tribunal.

3. Claimant filed claim petition seeking compensation of Rs. 2,50,000/- from the respondents alleging that, when he was proceeding as a pillion rider on the scooter bearing No. AAI 3345, belonging to the second respondent, being driven by the third respondent, and under a hire purchase agreement with fourth respondent and insured with the fifth respondent, a motor-cycle bearing No. ABJ 770 belonging to and being driven by the sixth respondent and insured with the seventh respondent came at speed and in a rash and negligent manner from opposite direction of the scooter and dashed against the scooter on which he was proceeding resulting in injuries and consequent amputation of his right leg.

4. First respondent filed a counter, contending that since the scooter was insured, the Insurer is liable to pay the compensation payable to the claimant. Respondents 2 and 3 chose to remain ex parte. Fourth, seventh and fifth respondents filed counters putting the claimant to proof of the allegations in the petition. Sixth respondent who appeared through a Counsel, did not choose to file a counter. In support of his case, claimant examined himself as RW. 1 and

marked Exhibits A-1 to A-12. No evidence either oral or documentary was adduced on behalf of the respondents 1, 4 to 6. On behalf of seventh respondent, its Branch Manager was examined as R.W. 1, but no documentary evidence was adduced on its behalf. The Tribunal held that the accident occurred due to the rash and negligent driving of the motor-cycle by the first respondent and that the claimant is entitled to Rs. 4,03,800/- as compensation for the injuries sustained by him, but since he claimed Rs. 2,50,000/- only, it passed an award for Rs. 2,50,000/- in favour of the appellant against respondents 1, 6 and 7. Dissatisfied with the compensation awarded to him, claimant preferred C.M.A. No. 1409 of 1996 and aggrieved by the compensation awarded to the claimant, the seventh respondent preferred CM.A. No. 1586 of 1994.

5. The point that arises for consideration is whether the appeals are maintainable?

6. Seventh respondent in the O.R filed C.M.A. No. 1586 of 1994 questioning the quantum of compensation without obtaining permission of the Tribunal, u/s 170 of Motor Vehicles Act, 1988 (for short "the Act"). So as per the ratio in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , appeal by the Insurer questioning the quantum of compensation is not maintainable and hence C.M.A. No. 1586 of 1994 is liable to be and hence is dismissed.

7. As per Section 173 of the Act, a person aggrieved by an award of a Claims Tribunal can prefer an appeal to this Court. Claimant filed a claim petition seeking compensation of Rs. 2,50,000/- against the respondents jointly and severally. The Tribunal awarded Rs. 2,50,000/- to the claimant after holding on all the issues in favour of the claimant. When the Claimant was awarded the compensation sought and when no finding is against him, claimant cannot be said to be a "person aggrieved" by the award passed by the Tribunal and so on that ground only, the appeal preferred by the claimant is liable to be dismissed.

CM.P. No. 21296 of 2003

8. During the pendency of the appeal, in 2003 i.e., about seven years after preferring the appeal, appellant filed this petition seeking amendment to the claim petition, alleging that the, Tribunal after having felt that he is entitled to Rs. 4,00,000/-, ought to have awarded Rs. 4,00,000/-, but restricted the compensation to the amount claimed by him and so, he is advised to file an amendment petition seeking higher compensation of Rs. 4,00,000/-.

9. The contention of the learned Counsel for the claimant is that since the Tribunal, which is bound to award just compensation, after having held that the claimant is actually entitled to Rs. 4,00,000/-, ought to have passed, an award for Rs. 4,00,000/- by the claim made in the claim petition and so the Tribunal restricting the award to the claim made by the claimant is highly technical and unjust, and so with a view to get over the technical defect, which should not have been a ground to withhold just compensation, claimant may be permitted to amend the quantum of compensation claimed.

10. Appellant who was represented by Counsel before the Tribunal, and who gave evidence as RW. 1 should know what is the just compensation to which he is entitled to. If during the course of trial he felt that the compensation claimed by him was too low, he ought to have filed a petition for amendment when the case was pending before the Tribunal. It is well known that in majority of claim petitions the claim would be made for more amount than that would legally be due to the claimants, by inflating the income and disability, possibly with a view to gain sympathy of the Tribunal, taking advantage of the liberal and large hearted attitude of the Tribunal, the claimant obviously after receiving notices in CM.A. No. 1586 of 1994 filed by the seventh respondent, with a petition to condone the delay, most probably to serve as a counterblast to the appeal filed by seventh respondent filed a cross-appeal (at that time appeals by insurers questioning the compensation also were being entertained). As stated earlier, since claimant cannot be said to be "aggrieved" by the award, appeal by him questioning that award is not maintainable. When the appeal itself is not maintainable, question of amendment to the claim petition in such unmaintainable appeal does not arise. Hence the petition seeking enhanced compensation is dismissed.

11. On merits also, the Tribunal without properly appreciating the evidence on record, seems to have fixed the compensation due to the claimant under, various heads arbitrarily and without any bias (sic. basis). It awarded Rs. 1,00,000/- "non-pecuniary losses" (end of para 17 of the award), Rs. 35,000/- towards "medical expenses, treatment charges, attendant charges, extra nourishment, transport charges", Rs. 20,000/- towards "loss of present income" and Rs. 2,48,800/- towards "present value of future losses" on the basis that he has 70% disability as per Ex. A-8 without keeping in view the fact that the person who issued Ex. A-8 was not examined. No doubt, leg of the claimant was amputated. It only caused inconvenience to him, but it did not result in any loss in his earnings or earning capacity. Admittedly claimant, who is a teacher, is continuing in the same job, drawing full salary in spite of the amputation of his leg. He cannot and would not be denied his increments due to the loss of his leg. Therefore the Tribunal awarding Rs. 1,00,000/- towards non-pecuniary losses, an amount of Rs. 2,48,800/- towards "present value of future losses" is but a windfall on the claimant.

12. All these apart the Tribunal merely on the basis of the ipsi dixit of the claimant, and Ex. A-1 held that the accident occurred due to the negligence of the motorcyclist. Claimant who was the pillion rider on the scooter, did not examine the driver of the scooter to speak as to how the accident took place. Obviously because the scooter driver also was negligent the claimant impleaded him and the owner of the scooter also as respondents. When there is a collision between two vehicles, and when there is no reliable evidence as to who was responsible for the accident, and since even if one of the drivers of the vehicles was careful the accident can be avoided, normally, negligence would be attributed to both the vehicles involved in the accident. Merely because the Tribunal, in an arbitrary

fashion, chose to fix the compensation payable to him, the claimant, who ought a particular amount as compensation, cannot by making use of the observation in the award a ground for claiming higher compensation, seeking amendment of the claim petition. In fact, Rs. 2,50,000/- awarded by the Tribunal for an accident that took place in 1989 is more than just and reasonable. If there were no embargo on the maintainability of the appeal by the insurer, this would have been a case for interference by the appellate Court for reduction of the amount awarded by the Tribunal. Hence both the appeals are liable to be and are dismissed.

13. In the result, C.M.A. No. 1586 of 1994 and C.M.A. No. 1409 of 1996 are dismissed as not maintainable. Parties shall bear their own costs in these appeals.