

(2021) 12 TEL CK 0009

In the Telangana High Court

Case No : Civil Miscellaneous Appeal No. 886 Of 2004

National Insurance Company Ltd., Nizamabad

APPELLANT

Vs

Rathod Vasanth Rao And Another

RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(2)

Citation : (2021) 12 TEL CK 0009

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The claimant of the motor vehicle accident laid the appeal seeking enhancement of compensation awarded by the XIV Additional Chief Judge, City Civil Court, Hyderabad, in O.P.No.590 of 2003. As against the claim of Rs. 1,50,000/-, the learned trial Judge awarded compensation at Rs. 48,000/- together with interest at 9% per annum. It may be recorded that the insurer did not prefer any appeal.

2. The appellant, who is the claimant, filed O.P.No.590 of 2003 seeking compensation in respect of the injuries sustained by him. He claims that he was a businessman-cum-driver of the auto rickshaw.

On 22.01.2003, the claimant was driving his auto trolley with a load of eggs from Uppal to Cherlapalli. Near Medipally, the offending car owned by the first respondent and insured with the second respondent was driven rashly and negligently by the driver of the car. The offending car dashed the auto trolley from behind. The claimant claimed that he sustained fracture of the pelvic bone and other injuries on the head, hands and waist. The claimant was initially treated in Gandhi Hospital, Secunderabad. He subsequently, underwent treatment in a private hospital. The claimant averred that he suffered from urological problem, as he could not pass urine and that he was bedridden on

account of fracture of the pelvic bone. The claimant is no more able to drive an auto, so much so he suffered permanent disability.

3. The first respondent contended that the accident was due to the rash and negligent driving of the claimant himself. The second respondent also opposed the claim.

4. As rightly submitted by Sri K. Jagathpal Reddy, learned counsel for the claimant-appellant, the respondents cannot question the rashness and negligence on the part of the driver of the offending car, where no appeal was preferred by the respondents questioning the finding of the trial Court that the accident was due to the rash and negligent driving of the driver of the offending car. At any rate, the evidence of claimant as PW.1 coupled with the certified copies of the First Information Report and charge sheet under Exs.A.1 and A.2 established that the accident was, indeed, due to the rash and negligent driving of the driver of the offending car. I, therefore, agree with the contention of the learned counsel for the claimant that it was proved by the claimant that the accident was due to the rash and negligent driving of the driver of the car.

5. Smt. S.A.V. Ratnam, learned counsel for the second respondent-insurer contended that the quantum of compensation awarded at Rs. 48,000/- by the trial Court itself is on the higher side and that the claimant is not entitled to enhancement of the compensation as awarded by the trial Court. She claimed that the evidence of PW.2 cannot be accepted regarding Ex.A.9 disability certificate and that the disability as recorded by the Gandhi Hospital, Secunderabad, as can be seen from Exs.A.3 and A.4 deserve to be taken into consideration.

6. Ex.A.3 is the medical certificate issued by the Gandhi Hospital, Secunderabad disclosing that the claimant suffered from abrasions and lacerations. Ex.A.4 discharge card discloses that the claimant suffered from fracture of superior interior pubic rami of the left side of the pelvis and that he was inpatient from 23.01.2003 till 28.01.2003. Ex.A.4 also recites that he was advised bed rest for a period of one month.

7. PW.2, who is a private doctor, certified regarding the injuries of the claimant and assessed the disability at 25%. The learned counsel for the second respondent-insurer contended that the evidence of PW.2 cannot be accepted where PW.2 did not treat the claimant and also on the ground that the rate of disability at 25% as suggested by PW.2 ran contrary to Ex.A.4 discharge card. In *Charan Singh v. G. Vittal Reddy* 2003 (4) ALD 183, a Division Bench of this Court observed that it is not necessary that the assessment of the disability be by the Doctor who treated the injured only and that any qualified doctor may assess the loss of disability vis-à-vis the earning capacity. I consider that what is required to be noticed is the disability of an injured person and not the hypertechnical considerations like whether the Doctor, who issued the certificate was the same Doctor who treated the injured at the time of the accident. The evidence of PW.2,

therefore, cannot be rejected on the ground that PW.2 did not treat the claimant at the time of the accident.

8. In *Syed Saleem v. Abdul Shukur* 2007 (1) ALT 648, relying upon *Charan Singh*, this Court further observed that any qualified medical practitioner can issue the disability certificate. The contention of the learned counsel for the second respondent that Ex.A.9 disability certificate should be discarded since the same was issued by PW.2 cannot be countenanced in view of this decision. Indeed, evidentiary value of Ex.A.9 disability certificate under Ex.A.9 per se cannot be doubted on the ground that PW.2 did not treat the claimant.

9. The learned counsel for the second respondent-insurer contended that Ex.A.4 discharge card did not agree with the evidence of PW.2 read with Ex.A.9. It may be noticed that Ex.A.4 discharge card recorded that the petitioner suffered bone fracture of the left side of pelvis and advised bed rest for a period of one month. Where the claimant suffered fracture of the pelvic bone, when PW.2 certified the rate of disability at 25% after due examination of the claimant, I cannot but hold that the evidence of PW.2 deserves to be accepted. I consequently deem it appropriate to hold that the claimant suffered disability to a tune of 25%. At the same time, the trial Court was justified in considering that the claimant was bed ridden for a period of three months and could not attend to his normal duties of work on account of fracture of pelvic bone.

10. The trial Court considered that the claimant failed to prove his income. Apart from making a statement that he was earning Rs. 10,000/- by selling eggs, the claimant failed to produce any evidence to prove his income. Where admittedly the claimant was the owner of the auto, the trial Court would appear to have determined the notional monthly income of the claimant at Rs. 5,000/-. Indeed, the trial Court did not specifically spell out the monthly income of the claimant but awarded compensation at Rs. 15,000/- considering that the claimant was bed ridden for a period of three months and consequently suffered loss of income for a period of three months. It can be culled out from this observation of the trial Court that the trial Court deemed it appropriate to determine the income at Rs. 5,000/- per month. Curiously, the claimant claimed Rs. 77,000/- towards loss of future earnings. Even if the notional income of the claimant is concerned at Rs. 2,000/- and even if the partial permanent disability is calculated at 25%, where the relevant multiplier is 18 in view of *Sarla Verma v. Delhi Transport Corporation* 2009 ACJ 1298, the compensation towards loss of future income would be more than Rs. 77,000/-.

11. The learned counsel for the claimant contended that the Court is entitled to grant compensation over and above the claimed amount. He placed reliance upon *Nagappa v. Gurudayal Singh* (2003) 2 SCC 274 and also *Oriental Insurance Company Limited v. Mohd. Nasir* (2009) 6 SCC 280. The Supreme Court held in *Nagappa* and several other cases that it is open for the Court to grant compensation over and above the claimed amount. However, there must be special reasons to grant compensation over and above the awarded amount.

When the claimant himself considered that compensation towards loss of future earnings is at Rs. 77,000/-, I am afraid that the claimant is not entitled to enhanced amount. The claimant accordingly shall be entitled to compensation at Rs. 77,000/- towards partial permanent disability.

12. The claimant claimed Rs. 3,000/- towards transport charges and Rs. 15,000/- towards pain and suffering. The trial Court awarded both the amounts as claimed by the claimant. The claimant sought for Rs. 30,000/- towards loss of earnings. The trial Court deemed it appropriate to award Rs. 15,000/- considering that the claimant was bedridden for a period of three months and suffered loss of income at Rs. 5,000/- per month. In the absence of evidence regarding income,

I agree with the finding of the trial Court in this regard.

13. The claimant was awarded compensation at Rs. 6,000/- towards damage to clothing and articles. It may be recalled that the claimant was carrying load of eggs when his auto driver was hit by the offending car. Award of compensation at Rs. 6,000/- towards damage of clothing and articles in the light of the embargo u/s.147 (2) of the Motor Vehicles Act does not deserve to be interfered. Finally, the trial Court rejected the claim of the claimant towards loss of amenities. There is no proof that the claimant is so incapacitated as to suffer loss of amenities to award compensation at Rs. 10,000/- as claimed by the claimant. I once again agree with the finding of the trial Court that no amount of compensation deserves to be awarded towards loss of amenities. The claimant, consequently, is entitled to compensation at

a) Compensation towards partial permanent disability

Rs. 77,000.00

b) Compensation towards loss of Earnings for three months

Rs. 15,000.00

c) Compensation towards transport charges.

Rs. 3,000.00

d) Compensation towards pain and suffering

Rs. 15,000.00

e) Compensation towards Damaged clothes and articles

Rs. 6,000.00

Total

Rs. 1,16,000.00

14. The accident occurred when the car of the first respondent hit the auto

driven by the claimant from behind. The second respondent has taken the stand that the claimant-appellant applied sudden breaks at a speed breaker without any sort of caution or indication to the drivers of the vehicles behind that the auto was slowing down and that the claimant thus was responsible partly, if not wholly for the accident. As already pointed out, the insurer is shut off from questioning the aspect of rashness and negligence on the part of the driver of the offending car. The first respondent inter alia claimed that the claimant contributed to the negligence. The trial Court determined the negligence of the claimant at 25% and the negligence on the part of the driver of the offending car at 75% and deducted 25% from the compensation payable to the claimant.

15. The claimant failed to explain and show that there was no negligence on his part. I have no hesitation to accept the view of the trial Court that the claimant was guilty of contributory negligence to the extent of 25%. Consequently, 25% out of the compensation as determined at Rs. 1,16,000/- is liable to be deducted towards the contribution of the claimant. 25% of Rs. 1,16,000/- is Rs. 29,000/-. After deducting the same from the amount of compensation, the claimant shall be entitled to compensation at Rs. 87,000/- only.

16. In view of Sarla Verma, the claimant, however, is entitled to compensation at 6% per annum only from the date of petition till realization.

17. Accordingly, this appeal is allowed enhancing compensation payable to the claimant to Rs. 87,000/- together with interest at 6% per annum from the date of petition till deposit and costs pro-rata before the trial Court. The claimant shall be entitled to withdraw Rs. 50,000/- out of the awarded amount at the first instance. The balance shall lie in fixed deposit for a period of two years at the end of which, the claimant shall be entitled to withdraw the balance together with accrued interest and costs. There shall be no order as to costs in this appeal.