
(2023) 04 TEL CK 0053

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 506 Of 2017

New India Assurance Co Ltd., Mahaboobnagar

APPELLANT

Vs

K Satyanarayana, Mahaboobnagar Dist 2 Others

RESPONDENT

Date of Decision : 17-04-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Indian Penal Code, 1860 — Section 337, 338

Citation : (2023) 04 TEL CK 0053

Hon'ble Judges : M.G.Priyadarsini, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

1. Assailing the order and decree, dated 29.02.2016 rendered in M.V.O.P.No.263 of 2010 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-IV Additional District Judge, Mahabubnagar, (for short 'the Tribunal'), the New India Assurance Company Limited, Mahabubnagar, preferred this appeal.

2. The parties in this appeal are referred to as they stood before the Tribunal.

3. Brief facts of the case are that the petitioner filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') claiming compensation of Rs.7,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 10.10.2007. According to the petitioner, on 10.10.2007, while he was returning to Mogligidda from Shadnagar in an Auto bearing No.AP 22 V 7640 at about 4.30 PM., in the limits of Elikatta Village, the driver of another Auto bearing No.AP 22 V 4503 came in a rash and negligent manner with high speed and dashed the Auto bearing No.AP 22 V 7640 wherein the petitioner was travelling, in opposite direction. As a result, the petitioner sustained injuries. Immediately, the petitioner was shifted to a hospital in Kurnool, from there to Government Hospital, Shadnagar. Thereafter, he was referred to Osmania General Hospital, Hyderabad. The petitioner sustained severe fracture injuries and he took treatment for two months by spending

Rs.1,50,000/- and he required huge amount for his further treatment. He was permanently disabled to do any work and he was suffering painful limping of fracture, which led to shortening of the right lower limb about four inches and the movement of right ankle, right knee and right hip joint are restricted and he suffered physical pain and mental agony due to injuries. It is the further case of the petitioner that prior to the accident, he was earning Rs.5,000/- per month by doing coolie work and he lost such income from the date of accident. Therefore, the petitioner is claiming Rs.7,00,000/- under all heads against the owner and insurer of Auto bearing No.AP 22 V 7640, wherein he was travelling at the time of accident, as well as against the owner of Auto bearing No.AP 22 V 4503.

4. All the respondents have contested the claim by filing separate counters. Respondent Nos.1 and 2, who are owner and insurer of Auto bearing No.AP 22 V 7640, wherein the claimant was traveling at the time of accident, disputed the accident contending that the driver of said Auto had driven his vehicle at a normal speed and there was no fault on the part of the driver of said Auto and that the alleged accident occurred due to rash and negligent driving on the part of the driver of Auto bearing No.AP 22 V 4503, who came in an opposite direction at high speed and hit the Auto bearing No.AP 22 V 7640. Respondent No.3, who is owner of Auto bearing No.AP 22 V 7640 contended that there was no negligence on the part of the driver of his Auto and that respondent No.1 managed the Police, Shadnagar and got registered a case against him and, therefore, he is not liable to pay any compensation.

5. Before the Tribunal, on behalf of the claimant, PWs 1 to 3 were examined including the claimant as PW-1 and Dr.H.K.Vasantha Madhava, who issued Disability Certificate, as PW-2 and Dr.K.Kodandapani, who treated the claimant in Osmania General Hospital, Hyderabad, as PW-3 and Exs.A-1 to A-6 were marked. Apart from that Ex.C-1-original case sheet of the claimant was marked on behalf of the claimant. On behalf of respondents, RWs 1 to 3 were examined and Exs.B-1 to B-5 were marked.

6. The Tribunal, upon evaluation of pleadings and evidence, has given a finding that both the vehicles are responsible for the said accident, because there was a head on collision between two vehicles and liability for payment of compensation fixed on respondent Nos.1 to 3 jointly and severally. The Tribunal has awarded a sum of Rs.3,78,600/- towards compensation with proportionate costs and interest at 9% per annum, to be paid by all the respondents jointly and severally. The Tribunal has further directed respondent No.2 to pay the said compensation within a period of 30 days from the date of order and recover 50% of compensation from respondent No.3, since there was collision of two vehicles and both the drivers of two Autos have driven their vehicles rash and negligently. Challenging the same, the insurer of Auto bearing No.AP 22 V 7640 filed the present appeal.

7. Heard both sides and perused the material available on record.

8. The learned Standing Counsel for the appellant/Insurance Company contended that the finding recorded by the Tribunal on the point of composite negligence of both the vehicles is not supported by the evidence brought on record. According to him, there was negligence on the part of the driver of Auto bearing No.AP 22 V 4503 and he was solely responsible for causing the accident and, therefore, the entire liability ought to have been fastened upon the owner of said Auto, who is respondent No.3. Moreover, the driver of said Auto was convicted by the criminal Court. He alternatively argued that in any event, it is a case of head-on-collision between the two vehicles and as such, the Tribunal at least ought to have apportioned the liability between the two vehicles at the ratio of 50:50. He has further contended that in cases of head on collision between two vehicles, total liability for payment of compensation cannot be fastened only on the insurer of one vehicle. It is a settled position of law that while imposing the liability of payment of compensation, both the vehicles should be held equally liable. The Tribunal has failed to consider this aspect. He has further contended that the Tribunal had taken the disability and loss of earning power at 60%, which is excessive and that the shortening of leg is not disability as held by the Hon'ble Supreme Court in 2008 (6) ALD SC 82.

9. Learned counsel for the claimant defended the impugned award and stated the same to be just and apposite.

10. Points which arise for consideration are:

(i) Whether the finding reached by the Tribunal on the issue of composite negligence is supported by the evidence on record?

(ii) If it is a case of head-on-collision between the two vehicles, whether the appellant/Insurance Company is not solely liable to satisfy award?

(iii) Whether the amount of compensation awarded by the Tribunal having regard to the disability of the claimant needs any correction?

11. On a perusal of the records, it is clear that the claimant has travelled in the Auto bearing No.AP 22 V 7640 as a passenger and another Auto bearing No.AP 22 V 4503, which belonging to respondent No.3, came in the opposite direction. It is stated in the claim petition that the driver of Auto bearing No.AP 22 V 4503 came in a rash and negligent manner and hit against the Auto, in which the claimant travelled as a passenger. Based on a complaint lodged by the driver of Auto bearing No.AP 22 V 7640, a criminal case was preferred against the driver of Auto bearing No.AP 22 V 4503. Ex.A-1 is the First Information Report. Exs.B-2 to B-5 are certified copies of charge-sheet, Crime Detail Form in Crime No.418 of 2007, Judgment in C.C.No.448 of 2007 and 251 examination in C.C.No.448 of 2007 respectively. Exs.B-2 to B-5 show that the driver of Auto bearing No.AP 22 V 4503 was convicted for the offences under Sections 337, 338 I.P.C. on his plea of guilt.

12. Though Police have registered a case against driver of Auto bearing No.AP 22

V 4503 and has filed a charge-sheet and subsequently, he was convicted by the criminal Court, but the same cannot be said to be conclusive. The method and manner in which the accident has taken place leaves no room for doubt that it was a case of composite negligence of drivers of both the Autos. If the said two vehicles were driven by both the drivers in a careful and conscious manner, the accident has not been occurred. It is very much clear from the records that there was a head on collision between two Autos, hence, the findings arrived by the Tribunal by taking into consideration the method and manner in which the accident has taken place that both the drivers are responsible for the accident and fixed the liability of payment of compensation jointly and severally is reasonable and proper.

13. Ex.A-2 is wound certificate, it is observed that there are four grievous injuries. PW-2-Doctor was also examined before the Tribunal, who assessed the disability at 62%. The claimant at the time of accident was between the age group of 30 to 35 years and earning Rs.3,000/- per month by working as a coolie, the application of multiplier 16 is proper and by fixing 60% disability, the loss of earning capacity was assessed at Rs.3,45,600/-. As per the evidence of PW-3-Doctor, who treated the claimant in Osmania General Hospital, Hyderabad and basing on Ex.C-1-case sheet of the claimant, the period of treatment underwent by the claimant, the Tribunal has awarded Rs.8,000/- towards pain and suffering, Rs.20,000/-towards medical expenditure for the past and future and Rs.5,000/- towards transport charges. Hence, the total sum arrived by the Tribunal at Rs.3,78,600/- is very much reasonable.

14. Insofar as the interest awarded by the Tribunal is that the petitioner is entitled to interest @ 7.5% per annum on the compensation awarded by the Tribunal from the date of petition till realization, as per the decision of the Apex Court in Rajesh and others v. Rajbir Singh and others 2013 ACJ 1403 = 2013 (4) ALT 35. Hence, the interest granted by the Tribunal @ 9% per annum is reduced to 7.5% per annum on the awarded amount of Rs.3,78,600/- from the date of petition till the date of realization. Except the said modification, the remaining operative portion of the impugned order is confirmed.

15. Accordingly, the M.A.C.M.A. is allowed in part reducing the interest from 9% to 7.5% per annum on the awarded amount of Rs.3,78,600/- from the date of petition till the date of realization. There shall be no order as to costs.

Pending miscellaneous application, if any, shall stand closed.