

(2012) 09 AP CK 0028

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No"s. 459 of 2005 and 4177 of 2008 and M.A.C.M.A.M.P. No. 6605 of 2008

New India Assurance Company Ltd. and Another

APPELLANT

Vs

Anna Ramprasad and Another

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 2 ALD 366 : (2013) 1 ALT 647

Hon'ble Judges : C. Praveen Kumar, J

Bench : Single Bench

Advocate : C.V. Rajeeva Reddy in M.A.C.M.A. No. 459 of 2005 and Mr. T. Damodar in M.A.C.M.A. No. 4177 of 2008, for the Appellant; C.V. Rajeeva Reddy, Advocate for Respondent No. 3 in M.A.C.M.A. No. 4177 of 2008, Mr. T. Damodar, Advocate for Respondent No. 1 in M.A.C.M.A. No. 459 of 2005 and None for Respondent No. 2 in M.A.C.M.A. No. 459 of 2005 and for Respondent No. 1 in M.A.C.M.A. No. 4177 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

C. Praveen Kumar, J.—As both the appeals and MACMP No. 6605 of 2008 seeking amendment of claim petition arise out of the judgment and award dated 31.08.2004 passed in MVOP No. 661 of 2003 on the file of the III Motor Accidents Claims Tribunal, Warangal, the same are disposed of by this common judgment. For the sake of convenience, parties are referred to as they are arrayed in the O.P.

2. Originally, the claimant filed the claim petition u/s 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs. 3.00 lakhs for the injuries sustained by him in respect of an accident which took place on 10.01.2003 at 6.00 p.m. near Pendyala village bus stop, Dharamasagar Mandal, Warangal District. According to the claim petition, on that day the claimant along with another person were returning on Suzuki Motorcycle from Janagaon to Warangal. On the way one auto bearing No. AP 36 V 4894 driven by its driver in a rash and negligent manner,

dashed against the motorcycle in which the claimant was travelling along with one Lagishetty Krishna Murthy. Because of the said accident, the claimant sustained injuries. According to the claimant, he was aged 27 years at the time of accident and was working as medical representative, earning Rs. 7,000/- p.m.

3. The third respondent who is the insurer of the offending auto filed counter denying the allegations made in the claim petition. According to them, a report about the alleged incident was given two days after the incident which falsifies the involvement of the auto bearing No. AP 36 V 4894. The claim of the claimant to the effect of spending Rs. 60,000/- towards medicines and his right leg being shortened is being disputed. According to them, no responsibility can be fastened on them unless it is established beyond doubt that the said auto was involved in the accident. In any event, it is stated that the claim made is highly excessive.

4. The first respondent who is the owner of the offending vehicle remained ex parte.

5. The Tribunal, after considering the evidence of P.W. 1, Exs. A.1, A.2 and A.6 held that the accident took place due to the rash and negligent driving of the driver of the auto. The said finding has become final as it was not challenged either by the insurance company or by the owner of the said vehicle.

6. Heard both sides.

7. The evidence of P.W. 1 is to the effect that on 10.01.2003 himself and one Krishna Murthy went to Janagaon on motorcycle and while they were returning and when they reached near Pendyala bus stage, an auto bearing No. AP 36 V 4894 driven by its driver came from behind and dashed against their motorcycle, which resulted in claimant receiving fracture to his right tibia, fracture to right fibula Grade II, fracture near right knee joint, grievous injuries to right leg, right forearm and on right side of face. It may be noted that the claimant was driving the motorcycle at the time of accident. Though P.W. 1 was cross-examined at length, nothing useful was suggested to discard his testimony. Ex. A.1 the copy of the FIR reveals that the accident took place on 10.01.2003 and the information about the said accident was given in the police station on the next day at 6.30 p.m. Though there is a delay in lodging the first information report, but the said delay will not go to the root of the matter. Further, the charge sheet reveals that the victim who was cited as P.W. 1 received serious and multiple injuries.

8. The evidence of P.W. 1 further discloses that immediately after the accident he was shifted to Rohini Super Specialty Hospital, Hanamkonda where he was treated for one day and later on he got himself admitted in Sri Vijaya Diagnostics Research (Sri Kartikeya Orthopaedic Centre), Hanamkonda where he was treated as an in-patient for two months. According to him, he was treated surgically and as such he incurred a sum of Rs. 72,000/- towards medicines, extra nourishment and attendant charges. While being discharged from the said hospital, he was advised to take bed rest for one month. He thus claims that he was disabled

permanently. Though a suggestion was put to the claimant with regard to the disability sustained by him, nothing useful is elicited to discredit the fact of disablement.

9. P.W. 2 is doctor who treated the claimant at Sri Kartikeya Orthopaedic Centre, Hanamkonda. He found the following injuries on P.W. 1:

1. Open injury of bone with abnormal mobility and fracture of tibia right side.
2. Closed fracture fibula right side.
3. Laceration of right leg.
4. Abnormal mobility of right knee.
5. Contusion on right fore knee,
6. Abrasion over face.

10. According to P.W. 2, the injuries 1, 2 and 4 are grievous in nature. Ex. A.2 and A.11 the wound certificate and disability certificate are issued by him. According to him the patient is having 20% disability due to limitation of movement of ankle, P.W. 2 in his evidence admits that he was one of the members of the Medical Board in MGM hospital, Warangal and that the Medical Board alone is competent to issue the said certificates. Ex. A.11 disability certificate was issued by him on the basis of clinical examination and he did not obtain any X-rays of the patient as X-rays are not necessary to assess the disability.

11. Relying upon the evidence of the doctor, the learned counsel for the claimant contends that the extent of disability will always be equal to the loss of earning capacity. According to him, the Tribunal rightly calculated the extent of disability leading to loss of earning capacity as 20%.

12. On the other hand, the learned counsel for the insurance company contends that there is no evidence on record to show that the disability of 20% will lead to any loss of earning capacity. According to him, merely because there was restriction in movement of ankle, that by itself will not hamper the earning capacity of an individual, more so, in respect of the claimant who was only aged 27 years at the time of accident.

13. As seen from the evidence of P.W. 1, he was initially taken to Rohini Super Specialties at Hanamkonda and from there he was shifted to Sri Kartikeya Orthopaedic Centre, Hanamkonda where he was treated as an in-patient for nearly two months. The doctor opined that out of six injuries mentioned in the wound certificate three were found to be grievous and others were simple in nature. Ex. A.11 disability certificate issued by the doctor clearly indicates that the claimant was having 20% disability due to limitation of movement of the ankle.

14. The issue that falls for consideration is whether 20% disability sustained by

the claimant will lead to 100% loss of earning capacity.

15. The Tribunal, while taking into consideration the age of the claimant as 27 years and salary of the claimant at Rs. 7,000/-, arrived at loss of earning capacity due to his disability at Rs. 3,02,400/-. As observed by the Hon''ble Supreme Court and also by this Hon''ble Court, the compensation should be just and reasonable and it should be neither excessive nor too low. The Motor Vehicles Act being a beneficial legislation, the object behind the said Act is to place the victim in the same position in which he would be had he not met with an accident. When there is a claim of sustaining permanent disability it is the duty of the claimant to adduce satisfactory evidence to prove the said disability. Further, partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident.

16. It is the duty of the doctor or the claimant to lead evidence to show that the percentage of permanent disability is with reference to the whole body than to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 20 per cent of the left lower limb, it is not the same as 20 per cent permanent disability with reference to the whole body. The extent of disability of a limb or part of the body expressed in terms of percentage of the total function of that limb, obviously cannot be assumed to be the extent of disability of the whole body.

17. In the case on hand, P.W. 2 was the doctor and a member of the Medical Board who issued Ex. A.11 disability certificate. In Column 2 of the said certificate, it is mentioned as "20% only". It does not even show which part of the body or which part of the limb is disabled by 20%. The certificate issued by the authority appears to be quite vague. It may be true that the claimant might have sustained an injury which restricted in movement of his ankle, but definitely, there is no evidence on record to show that the disability sustained by him leads to 100% loss of earning capacity.

18. In *Raj Kishore Vs. Shri Ram Agrawal*, the Supreme Court was deciding an issue as to whether every fracture amounts to permanent disability. It was held that hairline fracture in head will not amount to permanent disability. Therefore, whether there is fracture or not, but what is the effect of the injury and whether the movements of any joint have been restricted or not has to be considered.

19. Further, the learned counsel for the claimant drew the attention of this Court to the provisions of the Workmen's Compensation Act and contends that even in case of injuries which are mentioned in Schedule I of the Act, still, the extent of disability has to be reckoned as total loss of earning capacity. According to him, total disablement means such disablement whether temporary or permanent which incapacitates a workman from any work, which he was capable of performing at the time of accident resulting in such disablement. It is his contention that the claimant was working as a medical representative. His duty is to go around to meet doctors canvassing for the company in which he was

working as a representative. The said work cannot be done in view of the restriction in movement of his ankle leading to difficulty in walking or even riding a motorcycle.

20. In my considered view, the said argument is not sustainable. Firstly, no evidence has been let in either through the doctor who was examined on behalf of the claimant or otherwise with regard to the incapacity of the claimant to do the nature of work which he was doing at the time of accident. Secondly, even the doctor in the certificate issued by him did not refer to the disablement of the limb, leave alone the disablement of the entire body or any particular limb. But the evidence on record which has been let in, in the form of Ex. A.2, the contents of which are spoken to by P.W. 2 disclose that the claimant sustained three fractures. Injuries 1, 2 and 4 are found to be grievous in nature. The first injury refers to fracture of tibia, second injury refers to fracture of fibula right side and fourth injury refers to abnormal mobility of right knee joint. Definitely, the said injuries will lead to some difficulty in discharging his duties as a medical representative. But the said injuries by themselves will not totally hamper the claimant from functioning as medical representative. In an identical case, this Hon'ble Court in C.N. Somasekhar Reddy Vs. I.D.L. Chemicals Limited and Another, observed as follows:

What is to be assessed is whether the injured is in a position to do the same work which he was doing at the time of accident and what is the percentage of disability sustained by him i.e., his physical disability and functional disability. Functional disability should be assessed considering the nature of work he was previously doing. While assessing the disability the Doctors have to consider these aspects and issue disability certificate both in respect of physical disability and functional disability..... Therefore, whether the claimant has sustained fracture or not, his disability has to be ascertained considering the functional disability.

21. In the case referred to above, the claimant did his M.S. in Engineering in USA and thereafter joined as Manager, Technical sales in Hyderabad Batteries Limited. Subsequently he started his own business. The claimant sustained injury to his right leg, underwent operations and skin grafting was done twice on his right foot leading to loss of earning capacity. It may result in partial loss of earnings since he might have some difficulty while undertaking journey, climbing etc. In the facts and circumstances of the said case, the functional disability for the purpose of assessing the loss of income was taken at 5% though physical disability was found at 35%.

22. In the case on hand, the evidence on record establishes that the claimant has sustained three fractures and he was also an in-patient in the hospital for two months. The doctor found that there was limitation to the movement of ankle and also weakness in dorsiflexion of ankle. I feel that the disability in movement of ankle as indicated above will result in loss of partial earnings. Therefore, some inconvenience would be there and in the circumstances of the

case, the functional disability for assessing loss of earning can be reasonably assessed at 10%.

23. Regarding the income of P.W. 1, the Tribunal after considering the evidence of P.W. 1 and the documents filed in support of his evidence, held that his monthly income is at Rs. 7,000/- p.m. The said finding of the Tribunal is not disputed by the insurance company. Further, P.W. 1 in his evidence deposed that he was treated as an in-patient for two months and incurred Rs. 75,000/- towards medicines, extra nourishment and attendant charges. Initially he was admitted in Rohini Super specialties Hospital, Hanamkonda for one day and later he got himself admitted in Sri Karthikeya Kidney and Orthopaedic centre. The said fact is supported by the evidence of P.W. 2, P.W. 2 the doctor who treated the claimant right from the day of his admission also deposed about the nature of treatment given to the claimant. As the evidence of P.W. 2 remain unimpeached, the documents which are issued in support of the claim made towards medical bills are not challenged in any form more so in the cross-examination of P.Ws. 1 and 2. So the finding of the Tribunal on the said aspect warrants no interference. The Tribunal also awarded a sum of Rs. 20,000/- towards pain and suffering, Rs. 15,000/- towards loss of earnings during the period of treatment and Rs. 2,000/- towards transportation charges and damage to clothing.

24. The learned counsel for the claimant contends that the Tribunal did not award any amounts under the headings loss of amenities and attendant charges. He further contends that the amount awarded under the heading pain and suffering is less and it needs to be enhanced. It is true that the claimant was an in-patient for a period of two months and thereafter also he was advised to take bed rest for one month, P.W. 1 categorically deposed that even after one month of bed rest he was not able to attend to his duty because of pain. Having fixed the income of the claimant at Rs. 7,000/- p.m., the Tribunal should have awarded more than what has been awarded under the heading pain and suffering.

25. In view of the fact that the claimant was out of employment for nearly five months, a further sum of Rs. 15,000/- is awarded under the heading loss of earning during the period of treatment. Further the pain and suffering which the claimant would have undergone cannot be measured in terms of money. Therefore, I feel that a further sum of Rs. 10,000/- can be awarded under the heading pain and suffering. As no amount is awarded towards attendant charges, a sum of Rs. 14,000/- is awarded towards extra nourishment, attendant charges and loss of amenities since he was an in-patient in hospital for a period of two and half months and thereafter also he was forced to take bed rest. Further, the amount of Rs. 2,000/- awarded towards transport charges and damage to clothes is confirmed.

26. The assessment of compensation by the Tribunal was based on the income of the claimant at Rs. 7,000/- per month. Though the age of the claimant was taken at 28 years, the application of multiplier 18 need not be interfered with at

this distance of time for the difference of one number in the multiplier between the one adopted by the Tribunal and that laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, as adoption of multiplier is only an approximation. Thus the further loss of earnings would be Rs. 8,400/- (Rs. 700 X 12). Applying multiplier 18, it comes to Rs. 8,400 X 18 = Rs. 1,51,200/-.

27. Thus, the total compensation which the claimant is entitled to is Rs. 2,99,375/- which is rounded off to Rs. 3,00,000/-. The said amount will carry an interest of 9% p.a. as awarded by the Tribunal. With the above modifications CMA No. 459 of 2005 and 4177 of 2008 filed against the judgment and award passed by the Tribunal below in the OP. No. 661 of 2003 are disposed of. Consequently MACMAMP No. 6605 of 2008 filed seeking amendment of claim petition stands dismissed. No costs.