
(2023) 01 TEL CK 0044

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 366 Of 2017

Reliance General Insurance Company Ltd,

APPELLANT

Vs

Rangarigari Anil, Another

RESPONDENT

Date of Decision : 30-01-2023

Acts Referred:

Citation : (2023) 01 TEL CK 0044

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

Bench : Single Bench

Advocate : Ramachandra Reddy

Final Decision : Dismissed

Judgement

1. This appeal is filed by the Insurance Company aggrieved of the order and decree dated 22.11.2016 in M.V.O.P.No.348 of 2012 on the file of the Chairman, Motor Accident Claims Tribunal-cum- Additional District Judge, Nizamabad.

2. According to the petitioner, on 3-11-2011 at about 4-30 p.m. he was traveling in an auto rickshaw bearing No. AP 25 V 8707 from Banswada to Hanmajipet and on the way when they reached Venkatapoor village near to the land of Dharavath Valya, the driver of the auto drove it in a rash and negligent manner at high speed and lost control over the auto and dashed a motorcycle from the opposite direction and then the auto turned turtle, due to which, the petitioner fell down from the auto and sustained injuries. Immediately the petitioner was shifted to the Government Hospital, Banswada where the doctors provided first aid and referred him to higher center. Later he was shifted to Remedy Hospital, Hyderabad, where he took treatment from 4.11.2011 to 11.11.2011 as inpatient. The doctors conducted operations and thereafter he was shifted to Neelima Hospital, Hyderabad for further operations where he took treatment from 11.11.2011 to 20.11.2011 and he incurred an amount of Rs.3,00,000/- towards medical expenses. Due to the injuries sustained by him, he became permanently disabled and his earnings are badly affected. Thus, the petitioner claimed

compensation of Rs.15,00,000/-under various heads.

3. Respondent No.1 filed counter contending that he has no knowledge about the accident, as the said vehicle sold to one Hussain.D and it was also transferred in the name of purchaser and the said vehicle was insured with respondent No.2. It is further contended that the compensation claimed by the petitioner is excessive and therefore, prays to dismiss the petition.

4. Respondent No.2 filed counter disputing the manner of accident, age, avocation and income of the deceased. It is further contended that the compensation claimed by the petitioner is excessive and therefore, prays to dismiss the petition.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred on 3.11.2011 at about 4-30 p.m. at Venkatapoor village was due to rash and negligent driving of auto bearing No. AP 25 V 8707 by its driver?

2. Whether the petitioner received injuries in that accident?

3. Whether the petitioner is entitled for compensation, if so, to what amount and from which of the respondents?

4. To what relief?

5. In order to prove their case, PWs.1 to 4 were examined and Exs.A1 to A25 and Exs.C1 to C4 were marked. On behalf of the respondents, RWs.1 and 2 were examined and Exs.B1 to B4 were marked.

6. The Tribunal on considering the oral and documentary evidence available on record, partly allowed the O.P., awarding a total compensation of Rs.13,09,036/- along with costs and interest @ 7.5% per annum from the date of petition till the date of realization against the respondent Nos.1 and 2 jointly and severally. Aggrieved thereby, the appellant-Insurance Company has filed this appeal.

7. Heard the learned Standing Counsel for the appellant-Insurance Company and the learned counsel for the claimant-respondent No.1 herein. Perused the material available on record.

8. The learned Standing Counsel for the appellant-Insurance Company contended that the decree of the Tribunal is contrary to law, weight of evidence and that the accident occurred due to the rash and negligent driving of the motorcycle and not due to the rash and negligent driving of the auto. It is further contended that the driver of the auto did not possess valid driving license and as such, Tribunal grossly erred in awarding the compensation against the respondents 1 and 2 jointly and severally. Accordingly, prayed to set aside the impugned order in the O.P.

9. The learned counsel for the respondent No.1/claimant contended that the learned Tribunal has awarded just and reasonable compensation and the same

needs no interference by this Court.

10. With regard to the manner of accident, except stating that the rider of the motorcycle drove the vehicle in rash and negligent manner and caused the accident, there is no rebuttal evidence produced by the respondent No.2- Insurance Company in support of their contention. Hence, considering the evidence of PW-1 coupled with documentary evidence available on record, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle.

11. Coming to the quantum of compensation, as per the evidence of PW-2 and Ex.A3 certified copy of wound certificate shows that the injuries sustained by the petitioner are grievous in nature and he underwent so many operations and also taken physiotherapy. Further Ex.A4 to A22 show that he spent an amount of Rs.6,39,036/-. Further as per the evidence of PWs.2 to 4, PW1 was affected with paralysis and he underwent physiotherapy in Sri Sai Physiotherapy Clinic. PW-4 categorically stated that PW-1 underwent treatment in the MD Hospital and he requires mechanical aid and devices to attend his daily routine activities, and as per the injury cervical spine weakness of all four limbs. PW-2 also stated that as per the injuries, PW-1 became weak of both upper limbs and lower limb of both legs. He further deposed that due to his disability, he is unable to walk and restricted to wheel chair. Therefore, considering the injuries and the disability sustained by the petitioner, the tribunal rightly awarded an amount of Rs.6,39,036/-towards treatment and medical bills, Rs.25,000/- towards pain and sufferance, Rs.25,000/- towards extra nourishment, Rs.20,000/-towards transport charges and Rs.6,00,000/- towards partial disability and loss of future earnings. Thus, in all the petitioner awarded an amount of Rs.13,09,036/- under various heads, which is just and reasonable. Thus, there are no valid grounds to interfere with the findings of the Tribunal on this aspect.

12. With regard to the liability, though it is contended by the appellant-Insurance Company that the offending vehicle was sold to one Hussain, he did not produce any oral or documentary evidence to prove the same. Further it is also contended that the driver of the offending vehicle was not having valid driving license. But there is no mention in the charge sheet that the driver was not having valid driving license. Further RW-2, Junior Assistant of Regional Transport Authority, Nizamabad, categorically stated that on the date of accident, the driver of offending vehicle was holding valid driving license to drive non-transport auto. The question as to whether the driver of the vehicle holding licence to drive non-transport vehicle was authorised to drive transport vehicle, is no longer res integra in view of the judgment in the case of Mukund Dewangan vs. Oriental Insurance Company Limited and others (2016) 4 SCC 298, wherein the Apex Court held that "the mere fact that the driver who possessed a licence to drive the light motor vehicle did not possess a licence to drive heavy transport vehicle by itself would not be sufficient to hold that the insurance company would be absolved of its liability to pay compensation". In view of the above clarification by

the Apex Court, the said contention of the learned Standing Counsel regarding non-possession of transport driving licence by the driver of respondent No.2 and therefore, it is not liable to pay the compensation does not merit consideration and the same is rejected. Therefore, in view of the above discussion, this Court is of the opinion that there are no valid grounds to interfere with the cogent findings given by the Tribunal and the appeal is liable to be dismissed.

13. The appeal is devoid of merit and it is accordingly dismissed. Pending miscellaneous applications, if any, shall stand closed.