
(2011) 11 AP CK 0107
In the Andhra Pradesh High Court
Case No : M.A.C.M.A No. 1310 of 2009

Sohel Sardar Khan

APPELLANT

Vs

S. Rama Pathi Rao and another

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) ACJ 263 : (2012) 1 ALT 812

Hon'ble Judges : P. Durga Prasad, J;N.V. Ramana, J

Bench : Division Bench

Advocate : K. Rathanga Pani Reddy, for the Appellant; Ravi Shankar Jandhyala for Respondent No. 2, None appeared, for the Respondent

Judgement

P. Durga Prasad, J.—This appeal is at the instance of claimant directed against the award passed in O.P.No. 3076 of 2004 by the Chairman, Motor Accidents Claims Tribunal-cum-XVIII Additional Chief Judge, Hyderabad on 05.12.2008. The appellant herein has filed the petition u/s 166 of M.V. Act claiming compensation of Rs. 25,00,000/- for the injuries sustained by him in a motor vehicle accident occurred on 30.11.2003.

2. According to the petitioner on 30.11.2003 while he was travelling in Open Corsa car bearing No. AP 11M 345 from Bangalore to Hyderabad and when the car reached Pamidi, near Ananthapur at about 5.00 p.m., the driver of the car tried to overtake DCM van bearing No. AP 02T 6796 and could not control the vehicle and dashed the van, resulting which the left side of the car was totally damaged and the petitioner suffered crush injury to his left hand. Immediately, he was shifted to Appolo Hospital, Ananthapur and after first aid, he was shifted to Manipal Hospital, Bangalore, where the left hand of the petitioner was amputated above the elbow on 01.12.2003 and discharged on 09.12.2003. The petitioner has spent Rs. 1,00,000/- towards medical expenses. After amputation, the petitioner developed further complications of stress on the heart and thereby suffered with chest discomfort and admitted in Care hospital, Banjara Hills on

01.03.2004 where stent to LAD was done with thrombus and the petitioner incurred an amount of Rs. 2,00,000/- towards medical expenses. According to him, he is aged about 31 years working as Marketing Manager in M/G. A.V. Healthcare Products, Hyderabad and was drawing Rs. 15,008/- per month. After the accident and amputation of left hand above the elbow, the petitioner was removed from service and thereby he suffered total loss of earnings. He also suffered loss of future prospects. Hence, the petition.

3. The 1st respondent, who is the owner of the car, filed the counter admitting the accident and also suffering of crush injury to the left hand of the petitioner and also admitted about the amputation of the left hand above elbow. According to him, the said car was insured with 2nd respondent and the same is in force as on the date of the accident. The compensation claimed by the petitioner is highly excessive and pleaded for dismissal of the petition.

4. The 2nd respondent Insurance Company has filed the counter denying the averments made in the petition and pleaded that the accident took place due to the negligence on the part of the driver of the DCM van and not due to the rider of the Open Corsa car. Since two vehicles involved in the accident, the compensation, if any, awarded has to be apportioned between the owner and insurer of both vehicles. The petitioner put to strict proof with regard to rash and negligent driving of the driver of the car and also his sustaining crush injury, amputation of left hand above elbow and also his earnings. The compensation claimed by the petitioner is highly excessive and also prayed for dismissal of the petition.

5. On the above pleadings, the Tribunal has framed the following issues:

(1) Whether the petitioner has sustained injuries due to the rash and negligent driving of the driver of car bearing No. AP 11M 345?

(2) Whether the petitioner is entitled to compensation, if so to what amount and from whom?

(3) To what relief?

6. During the course of enquiry, the claimant examined himself as P.W.1 and also examined P.Ws.2 to 5 on his behalf and got marked Exs. A.1 to A.15. No oral evidence was adduced on behalf of the 1st respondent. On behalf of the insurance company, R.W.1 was examined and got marked Exs. B.1 copy of insurance policy.

7. Taking into consideration of the said oral and documentary evidence, the Tribunal has held issue No. 1 in favour of the petitioner holding that the accident has occurred due to rash and negligent driving of the driver of the car.

8. With regard to issue No. 2, the Tribunal by holding that the claimant has failed to establish that he is earning Rs. 15,000/- per month, taken notional income at Rs. 5,000/- per month and as the petitioner suffered 70% disability, awarded an

amount of Rs. 7,14,000/- towards loss of earnings due to the said disability, Rs. 80,000/- towards medical expenses and Rs. 1,00,000/- towards pain and suffering. In total, the Tribunal awarded Rs. 8,94,000/-towards compensation.

9. The appellant's counsel has pleaded that the claimant was working as Marketing Manager in M/s A.V. Healthcare Products, Hyderabad and earning Rs. 15,000/- per month and after the accident, he was removed from service, as such he suffered 100% loss of earnings and he has filed income tax returns Exs. A.13 and A.14 and the Tribunal is not justified in taking Rs. 5,000/- per month as notional income.

10. The Standing Counsel for insurance company on the other hand has pleaded that the Tribunal has failed to deduct 1/3rd towards personal expenses of the injured while awarding compensation.

11. On behalf of the petitioner, the income tax returns for the financial years 2001-2002 and 2002-2003 were marked as Exs. A.13 and A.14. The Tribunal has not relied upon the said documents holding that the income tax was paid once for the above said 2 years. In Ex. A.13 his gross salary is shown as Rs. 1,02,000/- and after deductions the taxable income is shown as Rs. 62,400/- and paid the income tax of Rs. 1,702/-. In Ex. A.14 his gross salary is shown as Rs. 1,80,000/- and after deductions the taxable income is shown as Rs. 1,45,400/-and paid the tax of Rs. 18,080/-. Since the above said income tax returns were filed much prior to the accident and he has shown the income from the salary, the income of the deceased can be taken as average of the said two returns. In Ex. A.13 the taxable income is shown as Rs. 62,400/-and in Ex. A.14 the taxable income is shown as Rs. 1,45,400/-. Thus, the average of the above said taxable income comes to Rs. 1,03,900/-. The Tribunal has taken into consideration Ex. A.12 disability certificate issued by the Medical Board, NIMS Hospital and calculated the compensation on the basis of disability of 70% sustained by the petitioner.

12. In Raj Kumar Vs. Ajay Kumar and Another, the Apex Court has observed that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. It is further observed that if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be 100%, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less.

13. As per the above said decision, the impact of disability suffered by the petitioner on the earning capacity has to be taken into consideration for assessing the future loss of earnings.

14. In the present case, the left hand of the petitioner was amputated above the elbow as per Ex. A.12, he suffered functional disability of 70%, which is permanent partial disability. As per the evidence of P.W.1, after sustaining the above injuries and amputation he was removed from service. Since the petitioner's service was terminated due to the amputation of the left hand, the loss of earning capacity can be taken as 60%. Since the injured is aged about 31 years as on the date of accident, as per the decision rendered in "Smt. Sarla Verma and others v. Delhi Transport Corporation and another (2) (2010 (1) An. W.R. 402 (SC) : 2009 (4) SCJ 91 : 2009 AIR SCW 4992)", the proper multiplier is "16". Thus the total loss of his future earnings comes to Rs. 1,03,900 X 60/100 X 16 = Rs. 9,97,440/-. In Raj Kumar's case (1 supra) the Apex Court categorically held that in cases of injured claimant with disability, there is no need to deduct 1/3rd towards personal expenses. Hence, the petitioner is entitled for Rs. 9,97,440/- towards loss of earning capacity. The Tribunal awarded Rs. 80,000/- towards medical expenses and Rs. 1,00,000/- towards pain and suffering. Since the Tribunal awarded reasonable amounts under the above said two heads, we do not want to interfere with the same. Hence, the petitioner is entitled for Rs. 11,77,440/-.

15. The Tribunal exonerated the liability of the insurance company as the injured was travelling in the car and held that the insurance company is not liable to pay the compensation.

16. The Standing Counsel appearing for the insurance company has admitted the insurance company's liability in view of the circular issued by their Head Office dated 16.11.2009. As per the above said circular, the insurance Company has conceded its liability towards the occupants of a private car and pillion rider of two-wheeler under standard motor package policy. Therefore, the insurance company is liable to pay the compensation along with 1st respondent. In the result, the appeal is partly allowed and the compensation awarded by the Tribunal is enhanced to Rs. 11,77,440/- from Rs. 8,94,000/- with interest at 6% P.A. on the enhanced compensation from the date of filing of the petition till the date of realization. The respondent Nos. 1 and 2 are jointly and severally liable for payment of the above said compensation.