
(1999) 12 AP CK 0084
In the Andhra Pradesh High Court
Case No : AAO No. 1028 of 1995

United India Insurance Co. Ltd., Chittoor APPELLANT
Vs
Priyanka @ Divya and another RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168
Penal Code, 1860 (IPC) — Section 337, 338

Citation : (2000) 2 ACC 586 : (2001) ACJ 2011 : (2000) 2 ALD 374

Hon'ble Judges : Gulam Mohammed, J

Bench : Single Bench

Advocate : Mr. S. Hanumaiah, for the Appellant; Mr. P. Govind Reddy, for the Respondent

Judgement

1. This appeal has been preferred by the Insurance Company against the award passed by the Tribunal in OP No.199 of 1992 dated 7-11-1994 wherein the Tribunal has granted a sum of Rs. 1,27,000/- as against the claim of Rs.4,50,000/-.

2. Brief facts of the case are to the following effect:

On 7-12-1991 the injured Priyanka and her father T. Kishore along with his wife were going in a Maruthi Van bearing No.KA.01/M-3365 and when the van reached Sankrantipalli Village, Chittoor-Bangalore Road, a lorry bearing No.ADA 1524 came in the opposite direction driven by its driver rashly and negligently and hit the Maruthi van causing damage to the van and severe injuries to Priyanka and her father and mother Smt. Vanaja. It is further averred that the van was proceeding at a normal speed on the left side of the road and the van driver lodged a complaint before the Bangarupalem Police on which a case in Crime No.187 of 1991 was registered against the driver of the lorry under Sections 337 and 338 IPC and the driver of the lorry admitted his guilt and he was convicted and sentenced to pay a fine of Rs. 1,150/- in CC 7 of 1992 on the file of the IV Additional Munsif Magistrate, Chittoor.

3. The Insurance Company filed a counter denying the averments in the claim petition. However it admitted that the vehicle is insured. It disputed the nature of injuries sustained by the injured and the compensation claimed is excessive.

4. On the above pleadings the Tribunal has framed necessary issues for consideration. As regards the first issue the claimant has adduced both oral as well as documentary evidence to substantiate that there is a negligence on the part of the driver of the lorry and due to which the accident resulted. On the other hand no oral or documentary evidence was adduced on behalf of the respondent. The learned Judge relied upon the version of PWs.1 and 2 which is in corroboration with Ex.A1 and particularly in view of the confession of the driver of the lorry in CC 7 of 1992 he believed the version of PWs. 1 and 2 and held that the accident resulted due to the rash and negligent driving of the driver of the lorry. I do not find any infirmity in the said finding reached by the Tribunal. As regards the second issue with regard to the just compensation u/s 166 of the Motor Vehicles Act the claimant has adduced the evidence of PWs.1 and 4. PW4 Dr. Kishore Nayak who was working as Oral and Maxillo Facial Surgeon at Mallya Hospital, Bangalore treated the injured and noticed the following injuries:

(1) Right lateral orbital searing extending into right cheek (she earlier had webbing of the lateral eye-lid which was repaired during May (1993);

(2) scaring of fore-head on both sides in tear bearing area; and

(3) lacerated abrasions in right post-auricular area and right submandible area.

5. He further deposed that there is a scar on the right cheek and requires plastic surgery atleast two or three times and he described this injury as a permanent disfiguration. He further deposed that each plastic surgery requires Rs. 15,000/- to Rs.20,000/- expenditure. PW1 who is the father of the injured deposed that the injured was studying in UKG and she is a brilliant student and she is getting water in her right eye. He further stated that because of this season her right cheek there is permanent dis-figuration to her face and the Doctor has suggested that the injured has to undergo two to three times plastic surgery. Apart from the evidence he has produced Ex.A2 Wound Certificate issued by PW4 indicating the nature of injuries sustained by the injured.

6. Considering the evidence of PWs. 1 and 4 coupled with Ex.A2 and relying upon the judgment of the High Court of Punjab and Haryana in Mala Aggarwal Vs. Jagdish Kumar and Others, , the learned Judge awarded a sum of Rs.75,000/- towards loss of prospects of marriage alliance and a further sum of Rs.35,000/- towards future medical expenses towards plastic surgery. The Tribunal also found that the minor girl was treated as in-patient for one week and two months as out patient and she incurred Rs.5,000/- towards "medical expenses and Rs.2,000/- towards extra nourishment and Rs. 10,000/- towards pain and suffering and awarded a sum of Rs. 1,27,000/- together with interest at the rate of 12%.

7. The learned Counsel for the appellant Sri Hanumaiah vehemently contended

that the Tribunal ought to have adopted a reasonable criteria in determining the compensation under the provisions of the Motor Vehicles Act. He argued that the Tribunal has awarded an excessive sum of Rs.75,000/- towards loss of prospects of marriage alliance. To substantiate this contention he has drawn my attention to a decision reported in 970960--> , wherein the Punjab and Haryana Court has an occasion to consider a case pertaining to dis-figuration of the face and awarded total compensation of Rs. 1,00,000/- towards pecuniary and non-pecuniary damages as against the claim of Rs.2,25,000/-. On the other hand the learned Counsel for the respondent Sri Govind Reddi contends that the Tribunal has examined the entire issue reasonably and his finding is based on the evidence of PW4 and on the totality of circumstances particularly with regard to the nature of injuries the petitioner sustained and also the future prospects of the injured with regard to her marriage and the compensation awarded by the Tribunal is just and reasonable.

8. The learned Counsel for the respondent has drawn my attention to a decision reported in *G. Jyoti v. Andhra Pradesh State Road Transport Corporation*, *Mushirabad 1997 (1) ALD 211*, particularly in a case of injury the compensation should be more than the death case and the learned Judge while considering the pecuniary and non-pecuniary damages. The learned Judge observed that the award of the Tribunal must reflect the social disability due to the physical disability and particularly whether a person is going to be married or not is a social decision apart from the individual decision. It is doubtful in such cases whether anybody would come forward to marry the claimant, unless he is adequately compensated in one form or the other. He has also drawn my attention to a decision reported in *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, . The Apex Court had an occasion to examine the compensation both pecuniary and non-pecuniary while determining the compensations the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future, (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit, (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

9. In another decision reported in *Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another*, , the Apex Court observed that the

determination of compensations in respect of injury cases must be liberal and the amount of compensation so awarded should not be niggardly and at the same not a wind fall as a profit making venture through the Tribunals or Courts. When the compensation is awarded by the Courts and Tribunals even the tortfeasor should feel that he is atoned for the sin committed by him in committing the accident robbing the precious life of a human being and injuring the innocent person for no fault of his and the guidelines from such precedents is only to emphasise that if there are two precedents dealing with the same question of assessing the compensation, the one which has adopted a liberal approach should be preferred than the one which has adopted the conservative approach.

10. The learned Counsel for the respondent argued that in the instant case the injured is a girl of six years and due to the scar on her right cheek she requires plastic surgery as there is a permanent disfiguration on her face. The Tribunal has rightly awarded the compensation considering the nature of injuries sustained by the injured which is described supra and that the evidence of PW4 suggesting for two or three plastic surgeries to be needed to the injured, the compensation awarded towards loss of prospects of marriage alliance.

11. Having regard to the facts of the case, I feel that the amount of Rs.75,000/- appears to be at a higher level thus a sum of Rs.50,000/- is adequate. This view I have taken in almost all the cases referred to above and the Courts have consistently awarded a sum of Rs.1,00,000/- both for pecuniary and non-pecuniary damages.

12. Following the decision of the Supreme Court in Dr. M.L. Sharma v. State of Haryana, (supra), I feel that the award of the Tribunal be reduced from Rs.1,27,000/- to Rs.1,02,000/- by altering the figure from Rs.75,000/- awarded towards loss of prospects of marriage alliance to Rs.50,000/-. The remaining amount awarded is hereby confirmed.

13. Thus the award passed by the Tribunal is modified by granting a sum of Rs. 1,02,000/- in all together with interest at the rate of 12% from the date of the order passed by the Tribunal till the date of realisation.

14. The appeal is partly allowed. No order as to costs.