APHC010320532023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3333]**
(Special Original Jurisdiction)

MONDAY,THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 346/2023

Between:

1. GIRAPPAGARI CHINNA NAGAMMA, W/O VENKATAMALLU @ CHENNAKESAVULU, HINDU. AGED ABOUT 42 YEARS. DOOR NUMBER 1-1189-51. ARUNODAYA COLONY, KADIRI TOWN, ANANTHAPURAMU DISTRICT.

...APPELLANT

AND

1. C MAHABOOB BASHA, S/O C.KHASEEM VALI, MUSLIM, AGED ABOUT 44 YEARS, DOOR NUMBER 11/109, KATIKA STREET, NEAR WATER TANK. SULTHAN MAZEED, YEMMIGANUR TOWN, KURNOOL DISTRICT (DRIVER OF EICHER VAN BEARING REGISTRATION NO.AP-07-TA-1458)

2. Y HANUMANTHA RAO, S/O KOTESWARA RAO, HINDU, MAJOR. KHAMMAMPADU VILLAGE, NUZENDLA MANDAL, GUNTUR DISTRICT (OWNER-CUM-POLICY HOLDER OF EICHER VAN BEARING NO.AP-07-TA-1458),

3. BANDI THAHEER BASHA, S/O BABDUL GAFOOR SAB, MUSLIM, MAJOR, DOOR NUMBER 18/781. ABDUL NAGAR, NEAR SARADA COLONY, YEMMIGANUR, KURNOOL DISTRICT (R.C.OWNER OF EICHER VAN BEARING REGISTRATION NO AP.07 TA.1458).

4. THE ORIENTAL INSURANCE COMPANY LIMITED, REPRESENTED BY ITS BRANCH MANAGER, ANANTAPUR.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Courtaggrieved by the order and decree passed in MVOP No.146 of 2018 dated 30.01.2023 on the file of the Motor Accident Claims Tribunal-cum-VII Additional District Judge, Anantapur

<u>IA NO: 1 OF 2023</u>

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to condone the delay of 27 days delay in filing the present M.A.C.M.A. and to pass

Counsel for the Appellant:

1. M KARIBASAIAH

Counsel for the Respondent(S):

1. A JAYANTHI
2.

The Court made the following:

JUDGMENT:-

The appellant/claimant filed this appeal aggrieved by order dated 30.01.2023 passed by the Chairman, Motor Accidents Claims Tribunal – cum – VII Additional District Judge, Anantapuramu in M.V.O.P.No.146 of 2018, whereby the Tribunal awarded Rs.3,15,200/- only as against the claim of Rs.7,00,000/- for the injuries sustained by her.

2. For the sake of convenience, the parties are referredto as they are arrayed before the Tribunal.

3. On 02.08.2014, at about 05.00 a.m., the claimant is said to have loaded 30 sheeps on to an Eicher van bearing no.AP07TA1458 at Kadiri Vemareddy circle by paying carriage fee of Rs.30/- per sheep and she sat in the cabin of the said vehicle; when the said vehicle reached Kokkanti cross village at about 06.00 a.m., the 1st respondent – driver of the van bearing No.AP07TA1458 drove the same in rash and negligent manner due to which, he hit a stationed Bolero vehicle parked on the extreme left side of the road; the said hit resulted in death of the driver of the bolero vehicle and commuted fracture to the left knee and right foot of the claimant. Immediately, the claimant was shifted to Area hospital, Kadiri and later to Sai Nath hospital, Kadiri for better treatment. The incident was reported to police and a case was registered in Crime No.89 of 2014 against the 1st respondent who is the driver of the 2nd respondent – owner of the eicher van which was insured by the 4th respondent. It is the case of the claimant that in the accident, she was severely injured and had to undergo several surgeries, despite the same, she became functionally disabled, hence, she filed the claim petition before the Tribunal seeking compensation of Rs.7,00,000/-.

4. The respondent Nos.1 to 3 remained exparte. The 4th respondent, who insured the Eicher van involved in the accident contested the claim petition by denying the manner of accident and particularly, the alleged rashness and negligence on the part of the 1st respondent driver. It further contended that the claimant never engaged the offending vehicle totally to transport her goods, but she has boarded the van not in the capacity of owner and that she is a gratuitous passenger. Thus, the 4th respondent is not liable to pay any compensation.

5. Basing on the above pleadings, the Tribunal framed the following issues for trial:

1) Whether R.1 on 02.08.2014 at about 6:00 AM near Kokkanti Cross village, Thanakal Mandal, Ananthapuramu District drove Eicher van bearing registration No.AP.02.TA.1458 in a rash and negligent manner and hit Bolero vehicle, which was stationed on the left side of the road and caused injuries to the petitioner?

2) Whether R.1 is holding valid driving license as on the date of accident?

3) Whether the petitioner is entitled to compensation? If so, how much and from whom?

4) To what relief?

6. During the course of trial, P.Ws.1 to 2 were examined and Exs.A1 to A7 were marked on behalf of the claimant; one K. Ram Gopal was examined as R.W.1 who got marked Ex.B1.

7. The Tribunal, after considering all the facts and material available before it, came to the conclusion that the accident occurred due to the rash and negligent driving of the 1st respondent and further awarded Rs.3,15,200/- of compensation to the claimant for the injuries

sustained by her in the accident occurred on 02.08.2014. Aggrieved by the same, the claimant has filed the present appeal seeking enhancement of the same.

8. Heard Sri. M. Karibasaiah, learned counsel for the appellant and Sri. Ravi Teja, learned counsel representing Ms. A. Jayanthi, learned Standing Counsel for the 4^{th} respondent/insurance company.

9. Perused the entire material available on record. It is evident from the record and also from the statement of the claimant that the claimant travelled in the eicher van as a mid way passenger and there is no evidence to fix the liability of paying compensation on 4^{th} respondent; it is also evident from the statement of P.W.1 coupled with Exs.A1 to A4 that the claimant travelled in the eicher van as an unauthorized passenger and that she could not prove the ownership to travel along with her goods in the eicher van. Thus, the Tribunal jointly answered issue Nos.1 and 2 by holding that the respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the claimant and has exonerated the 4^{th} respondent from its liability of paying compensation to the claimant.

10. However, it is evident from the award that the claimant herself was examined as P.W.1 and reiterated her case as stated in the claim petition and also got marked Exs.A1 to A7 to establish her case. P.W.1 categorically deposed that she was doing sheep business as on the date of accident and she boarded the crime vehicle which came from Guntakal. It is the case of the claimant that apart from her, three to four persons have boarded the said vehicle, but, however, in the absence of any documentary evidence to establish that she is the owner of the

sheeps and that she travelled in the said crime vehicle as owner of the sheeps, the Tribunal relying upon the evidence of R.W.1 exonerated the 4th respondent from paying the compensation. It can also be observed that the Tribunal has held that there is inconsistency in the evidence adduced by P.W.1 before the Tribunal and the statement recorded under Section 161 of the Criminal Procedure Code, before the Police which in fact cannot be relevant and considered in the proceedings before the motor accidents claim tribunal. In ***Oriental Insurance Co. Ltd., V. K. Balasubramanian[1],*** it was held as under:

> “"It is a well settled proposition of law that the judgments of the Criminal Courts are neither binding on the Civil Court/Motor Accident Claims Tribunal no relevant in a Civil Case or a claim for compensation under the Motor Vehicles Act, except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein. But unless and until they are proved to be incorrect or false by the person against whom the admissions are sought to be used as evidence, the same shall be the best piece of evidence."

11. However, on a perusal of the award, it can be observed that R.W.1, who is an officer of the 4th respondent was examined whereby, he deposed that the vehicle is covered with Ex.B1 – policy and the same was in force as on the date of the accident. He further admitted that Ex.B1 is a package policy and they have also collected extra premium for

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[1] 2007(2) TN MAC 399

third party. He further stated that owner, employee or any authorized personal agent pertaining to the good travelled from one place to another covers under non fare paying passenger subject to carrying of the goods in the vehicle.

12. A perusal of the evidence adduced by R.W.1 would go to show that only on the ground that P.W.1 could not establish that she is the owner of the goods and that there is inconsistency in her evidence adduced before the Court and her statements recorded under Section 161 of the Code of Civil Procedure, the Tribunal has exonerated the 4th respondent from the liability of paying compensation to the claimant. In such a case, the Tribunal ought to have considered P.W.1 as gratuitous passenger and ought to have fastened liability on the insurance company by directing it to initially deposit the compensation amount to the claimant and then recover the same from the insured. Under similar circumstances, the Hon'ble Supreme Court in "***National Insurance Co. Ltd. v. Swaran Singh & Ors.***[2]***"*** has categorically held that the insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount it can recover the entire amount paid to the third party on behalf of the assured. Therefore, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner.

13. In "***National Insurance Co. Ltd. v. Swaran Singh & Ors.,"*** *(referred above)* the Hon'ble Supreme Court while dealing with the case of unauthorized passengers held as follows:

> "Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. <u>The insurance company may not be liable to</u>

[2] (2004) 3 SCC 297

satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with Sub-section (1) thereof. The right to avoid liability in terms of Sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading."

14. As per the law laid down by the Hon'ble Supreme Court in the judgment (referred supra) even if the insurer successfully proves a breach of policy condition, the insurance company may still be directed to pay compensation to the claimant and then recover the amount from the insured (owner of the vehicle). This ensures that the rights of the third-party victim are protected and it was emphasized that insurance policies are statutorily required to protect third parties, and even in cases of breach by the insured, the insurer's liability towards third-party victims does not vanish immediately.

15. Furthermore, to prove that she sustained grievous injuries, she got examined P.W.2, the doctor who issued Ex.A7 – disability certificate. It is the evidence of P.W.2 that the disability of the claimant can be assessed as 65% out of which, 40% is assessed to right lower limb and

25% to left lower limb. P.W.2 further submitted that the claimant suffered compound fractures i.e. Grade III B fractures of 1, 2, 3, 4, 5 meta tarsals of right foot with compound fracture, dislocation of 1st metal torso palengal joint of right foot and fracture patella left side.

16. Now coming to the quantum of compensation, the claimant contended that she used to earn Rs.40,000/- per month from her business, however, in the absence of any documentary evidence, the Tribunal considered the notional income of the deceased as Rs.6,000/-. The claimant filed Ex.A6 – medical bills amounting to Rs.1,600/-, which shall be reimbursed to her. As such, Rs.1,600/- were awarded to the claimant under the head of medical expenses. Under the head of pain and suffering, the claimant was awarded Rs.50,000/-, which is reasonable as the claimant would have definitely suffered a lot considering the injuries sustained by her. In addition, Rs.5,000/- were awarded for transportation charges, Rs.15,000/- for extra nourishment, which in the considered opinion of this Court is not wrong in any way.

17. The claimant is said to have taken bed rest for seven months, as such, considering the monthly income of the claimant as Rs.6,000/-, the Tribunal has rightly awarded Rs.42,000/- [Rs.6,000/- X 7], under the head of loss of earnings. As discussed supra, P.W.2, who issued disability certificate to the claimant, assessed her disability at 65%. However, as P.W.2 did not assess functional and bodily disability of the claimant properly, the Tribunal considered the disability as 20% only, which in the considered opinion of this Court is untenable. The claimant was aged about 42 years as on the date of accident and the relevant multiplier as per ***SarlaVerma and Ors. V. Delhi Transport Corporation and another***is '14'. The claimant's annual income is considered as

Rs.72,000/- and 20% of the annual income is Rs.14,400/-, which is the actual component of loss to the claimant per annum due to the disability. Thus, the Tribunal awarded Rs.2,01,600/- [Rs.14,400/- X 14] to the claimant under the head of 'permanent disability'. In total, the Tribunal has awarded Rs.3,15,200/- to the claimant.

18. On a perusal of the award, it can be observed from Ex.A7 – permanent disability certificate issued by P.W.2 that the claimant's disability is assessed at 65%, however, during the course of cross examination of P.W.2, he deposed that out of the said 65%, 40% is assessed for right lower limb and 25% for left lower limb. He further deposed that he did not assess the functional disability exactly and also did not assess body disability of P.W.1. This Court is of the opinion that in circumstances where the disability certificate is absent, the Tribunal ought to have considered the disability as assessed by P.W.2. Considering the facts and circumstances of the case, this Court feels it appropriate to consider the disability of the claimant as 40% instead of 65%. Taking the disability of the claimant as 40%, the actual component of loss to the claimant per annum due to her disability is Rs.28,800/- [40% of Rs.72,000/-]. After multiplying Rs.28,800/- with '14', which is the relevant multiplier, the total amount of compensation under the head of permanent disability would be Rs.4,03,200/-.

19. The compensation awarded by the Tribunal under different heads and the amounts enhanced by this Court, are as follows:

Sl. No.	**Head of the claim**	**Compensation awarded by the Tribunal in Rs. Ps.**	**Amounts now awarded by this Court Rs. Ps.**
1.	Medical Expenses	1,600-00	1,600-00
2.	For pain and suffering	50,000-00	50,000-00
3.	Transportation	5,000-00	5,000-00

	charges		
4.	Extra nourishment	15,000-00	15,000-00
5.	Loss of earnings	42,000-00	42,000-00
6.	Permanent disability	2,01,600-00	4,03,200-00
	Total	**Rs.3,15,200-00**	**Rs.5,16,800-00**

20. Accordingly, the compensation payable to the claimant is enhance from Rs.3,15,200/- to Rs.5,16,800/-. The appeal is partly allowed directing respondent No.4 herein – Insurance company to initially pay the compensation amount of Rs.5,16,800/- along with interest at the rate of 6% p.a. from the date of petition till realization to the claimant, within a period of three months from the date of receipt of copy of the order and then recover the same from the insured-owner of the offending vehicle by filing Execution proceedings before the Tribunal. No costs.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE V. SUJATHA

Date:20.04.2026.

Gss