(2013) 10 AP CK 0005

Andhra Pradesh High Court

Case No: M.A.C.M.A. No. 191 of 2005

Smt. S. Dasli		APPELLANT
	Vs	
M/s. Arora Poultry Products Ltd. and United India Insurance Co. Ltd.		RESPONDENT

Date of Decision: Oct. 29, 2013

Final Decision: Partly Allowed

Judgement

Dr. B. Siva Sankara Rao, J.

The injured-claimant filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-II Additional Metropolitan Sessions Judge-cum-XVI Additional Chief Judge, Hyderabad, (for short, ''Tribunal'') in M.V.O.P. No. 337 of 2003 dated 17.09.2004, awarding compensation of Rs. 8,100/- (Rupees eight thousand one hundred only) as against the claim of Rs. 1,00,000/- (Rupees one lakh only), for enhancement of compensation as prayed for in the claim petition u/s 166 of the Motor Vehicle Act, 1988 (for short, ''the Act''). Heard Sri C. Vikram Chandra, the learned counsel for the appellant and Sri Naresh Byrapaneni, learned standing counsel for the 2nd respondent-United India Insurance Company Limited. The appeal against the 1st respondent-M/s. Arora Poultry Products Limited is dismissed for default. In this regard, in Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others, , the Division Bench of this Court at paragraph No. 12 held that statutory liability of the insurance company, in the absence of the owner of the crime vehicle in the appeal filed by the claimants, can be decided and maintainable as held in The Branch Manager, The New India Assurance Co. Ltd. Vs. Harijana Babakka and Others, for fixing statutory liability, the presence of the owner at the appellate stage is not necessary. The same was also quoted with approval in G. Aravind Kumar Rao Vs. Md. Sadat Ali and United India Insurance Co Ltd. . Thus, the contention that the appeal is not maintainable without impleading owner of the vehicle as co-respondent against the insurer of the vehicle

is not sustainable and thereby it can be taken up for hearing. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

2. The contentions in the grounds of appeal in nutshell are that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal was erred in arriving a wrong conclusion on the quantum of compensation and awarded a very meager amount instead of awarding as claimed and prayed for from the nature of the injuries proved sustained, pain and sufferance there from and treatment undergone, amount incurred for the same and hence to allow the appeal by enhancing and awarding full compensation as prayed for.

3. Now the points that arise for consideration in the appeal are:

1. Whether the compensation awarded by the Tribunal is not just and requires interference by this Court while sitting in appeal against the award and if so with what enhancement to arrive a just compensation and with what rate of interest?

2. To what result?

POINT-1:

4. The facts of the case as proved before the Tribunal and not in dispute in this appeal are that, on 12.11.2002 due to the rash and negligent driving of the driver of the crime vehicle (lorry bearing No. AP 28 U 6009) belongs to the 15t respondent insured with the 2nd respondent covered by Ex.B.1 policy, came in opposite direction, hit the claimant by Smt. Dasli w/o S. Ramulu, aged 41 years, Cooli by avocation while she along with her husband was proceeding on foot, as a result she sustained a blunt injury over abdomen (as per Ex.A.3 medical certificate and Ex.A.4 discharge summery), which occurrence is covered by Ex.A.1 First Information Report in Cr. No. 192 of 2002 u/s 337 IPC, and Ex.A.2 charge sheet. As per the evidence of the claimant- P.W.1, she spent Rs. 7000/- (Seven thousand rupees only) for treatment and filed Ex.A.8 bunch of bills for Rs. 5850/- (Rupees five thousand eight hundred and fifty only). However, the learned Chairman of the Tribunal, having found said injury sustained by the P.W.1 described in Ex.A.3 read with Ex.A.4 as simple in nature, simply awarded in all compensation of Rs. 8,100/- (Rupees eight thousand one hundred only) against respondent Nos. 1 and 2 jointly.

5. It is the contention of the learned counsel for the claimant in support of the grounds of the appeal that the compensation awarded is unjust, unreasonable and the Tribunal is erred in awarding such a meager amount though it was supposed to award just compensation by taking consideration of the nature of injuries referred in Ex.A.3 and proved by the evidence of P.W.1 with reference to it and from Ex.A.8 bills from nature of injuries including the fracture, its pain and sufferance, loss of earnings and for the treatment required, though not believed any permanent disability to apply multiplier method of structured formula.

6. Before coming to decide, what is just compensation in the factual matrix of the case, It is apt to state that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. In Ward v. James 1965(1) All. E.R. 563, it was observed by Lord Denning that award of damages in personal injury cases is basically a conventional figure derived from experience and from awards in comparable cases. Thus, in a case involving loss of limb or its permanent inability or impairment, it is difficult to say with precise certainty as to what composition would be adequate to sufferer. The reason is that the loss of a human limb or its permanent impairment cannot be measured or converted in terms of money. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case. Upjohn LJ in Charle red House Credit v. Tolly 1963 (2) All. E.R. 432 remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in LORD v. in 555 All.E.R (1) 1969 Cleaver, Parry Morris>observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment though it is impossible to equate the money with the human sufferings or personal deprivations. The Apex Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, with SLP (Civil) 4586 of 1989 at paragraph No. 12 held that in its very nature whatever a Tribunal or a Court is to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standard. Thus, in most of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependent and estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required.

7. From the above legal position, coming to the factual matrix, what the Tribunal taking into consideration of four injuries sustained by the claimant as per Ex.A.3 medical certificate and also loss earnings during period of treatment, awarded of Rs. 8,100/- as compensation is low and unjust. On perusal of the record and as per the Ex.A.3 medical certificate read with Ex.A.4 discharge summery of private hospital,

the claimant-appellant sustained a blunt injury over abdomen was treated as in-patient for 5 days. The Ex.A5 discharge bill shows for Rs. 3,820/-, Ex.A.8 bunch of medical bills are nearly for Rs. 3000/- in all. The claimant''s evidence shows in all she incurred Rs. 14,856/- (Rupees fourteen thousand eight hundred and fifty six only), out of which no doubt she claimed as spent Rs. 78007- in so called Sai Mani Nursing Home for treatment, which rightly not believed by the Tribunal. However, when the other bills supported by prescriptions are there covered by Exs.A.5 and A.8 comes to Rs. 7000/- (Rupees seven thousand only) that amount is required to be taken into consideration as medical expenses besides transport charges, compensation for the injury, its pain and suffering and loss of earnings, if any, during period of treatment.

8. Having regard to the above, by taking consideration of the injury sustained by the claimant, the treatment undergone, pain and sufferance an amount of Rs. 6,000/-, expenditure incurred for treatment and for medical expenses of Rs. 7000/-, loss of earnings, outcome of the said abdominal blunt injury apart from transport charges and attendant charges of Rs. 2000/-, in all an amount of Rs. 15,000/- is just and reasonable to award. Coming to the rate of interest, though the interest at 9% per annum awarded by the Tribunal even not in dispute, from the settled proposition of law in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and from the latest expression of the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, , interest is awarded at 7 1/2% per annum by modifying and reducing from 9% per annum awarded by the Tribunal. Accordingly, Point-1 for consideration is answered.

POINT -2:

In the result, the appeal is partly allowed by modifying the Award of the Tribunal on quantum of compensation by enhancing the same from Rs. 8100/- (Eight thousand one hundred only) to Rs. 15,000/- (Rupees fifteen thousand only) with interest at 7 1/2% per annum from the date of petition (MVOP) till realization/deposit with notice. Respondent Nos. 1 and 2, who are jointly and severally liable to pay the compensation, are directed to deposit said amount with interest within one month from today, failing which the claimant can execute and recover. On such deposit or execution and recovery, the claimant is permitted to withdraw the same. There is no order as to costs in the appeal.