(2013) 12 AP CK 0052

Andhra Pradesh High Court

Case No: M.A.C.M.A. No. 376 of 2009

Nagabathula Hara Gopal (died), Nagabathula Sundararao and two Others	APPELLANT
Vs	
Malluri Venkata Ramana and two Others	RESPONDENT

Date of Decision: Dec. 17, 2013

Hon'ble Judges: U. Durga Prasad Rao, J

Bench: Single Bench

Advocate: A. Gopala Krishnamacharyulu, for the Appellant; Sridhar Tummalapudi for Respondents No. 1 and 2 and Sri B. Devanand, for the Respondent

Final Decision: Partly Allowed

Judgement

U. Durga Prasad Rao, J.
Aggrieved by the award dated 28.08.2008 in M.V.O.P. No. 297 of 2006 passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, East Godavari District, Rajahmundry (for short "the Tribunal"), the claimants preferred the instant M.A.C.M.A. on the ground of inadequacy of compensation. The claimant Nos. 2 to 4 before the Tribunal are appellants herein and respondent Nos. 1 to 3 before the Tribunal are respondents herein.

2. The factual matrix of the case is thus:

a) 1st claimant - N. Hara Gopal (died) was the son of claimant Nos. 2 and 3 and brother of claimant No. 4 and they are residents of Rajahmundry. The case of the claimants is that 1st claimant was working as Sales Executive in Style Spa Furniture, V.L. Puram, Morampudi Road, Rajahmundry and was earning Rs. 5,000/- per month as salary. On

15.12.2005 in the morning at 11:00 am, 1st claimant along with his friend Asapu Durga Prasad went to Bhaskara Agencies Petrol Bunk, Morampudi centre for filling petrol in Bajaj Chetak Scooter bearing No. AP 5 A 2901. After filling the petrol, he and his friend started returning to his shop on the scooter. He turned his scooter towards Thadithota on Morampudi road. In the meanwhile, a lorry bearing No. AP 27 T 7539 came in the opposite direction from Morampudi road being driven by its driver in a rash and negligent manner and without blowing the horn and dashed 1st claimant''s scooter and thus caused the accident. The 1st claimant and his pillion rider fell down and sustained grievous injuries. The 1st claimant suffered fracture to his left tibia and another grievous injury to ankle of the left leg. He also suffered fracture to his right hand-wrist. His kidneys were damaged. He was initially treated in the District Hospital, Rajahmundry and later he was admitted in Raju Neuro Hospital, Rajahmundry. He underwent surgery for his fracture injuries and also took treatment for his damaged kidneys. He incurred huge medical expenditure and he suffered permanent disability. It is averred that accident was occurred due to the rash and negligence of the lorry driver. On these pleas, initially 1st claimant filed O.P. No. 297 of 2006 against respondent Nos. 1 to 3 who are the driver, owner and insurer of the offending lorry respectively and claimed compensation of Rs. 3,00,000/-. Pending O.P., 1st claimant died and claimant Nos. 2 to 4 who are his L.Rs. were brought on record.

b) Respondent Nos. 1 and 2 remained ex parte. 3rd respondent/Insurance Company filed counter and opposed the claim denying the petition averments and urging to put the claimants in strict proof of the claim averments.

c) During trial, P.Ws. 1 and 2 were examined and Exs. A. 1 to A. 10 and Ex. X1 were marked on behalf of claimants. Policy copy filed by 3rd respondent was marked as Ex. B. 1.

d) Perusal of the award of the Tribunal would show that having regard to Ex. A. 1 - FIR, Ex. A. 2 - charge sheet, Ex. A. 3 - wound certificate and Ex. A. 4 - M.V. Inspectors Report filed by the claimants and also considering that there was no rebuttal evidence on behalf of 3rd respondent, the Tribunal held that accident was occurred due to rash and negligent driving of the lorry by its driver.

e) Then regarding compensation, having regard to the nature of injuries and evidence of P.W. 2 - Dr. N. Satyanarayana, Nephrologist, the Tribunal granted total compensation of Rs. 45,937 under different heads as follows:

Hence, the appeal by the claimants.

3. Heard arguments of Sri A. Gopala Krishnamacharyulu, learned counsel for appellant and Sri Sridhar Tummalapudi, learned counsel for respondent Nos. 1 and 2 and Sri B. Devanand, learned counsel for 3rd respondent.

4. Learned counsel for appellant challenged the quantum of compensation as low and inadequate on two main grounds.

a) Firstly, he argued that the Tribunal grossly erred in granting only Rs. 14,937/- towards medical expenditure, though the claimants produced medical bills for Rs. 1,71,391.58 and P.W. 2 - Dr. N. Satyanarayana deposed about them. Learned counsel vehemently argued that the Tribunal erred in accepting medical bills for Rs. 14,937/- only and discarding the remaining medical bills for Rs. 1,56,454/- on the ground that the first set of medical bills were computerized medical bills whereas second set of medical bills were manual bills and could be manipulated. He argued that there was no basis for Tribunal to come to such conclusion. He argued that in the resultant accident, the 1st claimant suffered fracture to his left leg and ankle and his kidneys were also damaged, for which he was treated in Raju Neuro and Multi Specialty Hospital, Rajahmundry and underwent surgery to his left leg. Further, for his damaged kidneys, the 1st claimant underwent treatment through P.W. 2 - Nephrologist, who performed dialysis to the 1st claimant and even at the time of filing O.P. also he was undergoing treatment for his kidneys problem. Learned counsel argued that the Tribunal having accepted the medical evidence, ought to have granted the medical expenditure covered by Ex. A. 5 - medical bills but however the Tribunal rejected most of the medical bills under an erroneous observation that those bills were manual bills and could be fabricated. He thus submitted that the entire medical expenditure covered by Ex. A. 5 - medical bills may be granted.

b) Secondly, learned counsel argued that the Tribunal granted a low rate of interest at 6% per annum, thought the Tribunals are now awarding 7.5% to 9% of interest basing on the rate of interest admitted by the nationalized banks. He thus prayed for enhancement of compensation by allowing the appeal.

5. Per contra, learned counsel for 3rd respondent/Insurance Company argued that in the resultant accident, the 1st claimant suffered fracture of left leg only and he has not suffered any injury to his kidneys. Even as per the evidence of P.W. 2, the 1st claimant was suffering from chronic renal failure and was taking treatment for that purpose. Though P.W. 2 tried to connect his kidney problem to the accident by deposing that the accident aggravated his renal problem, he could not substantiate the same. Hence the Tribunal rightly observed that none of the medical records including the case sheet proves that due to the impact of accident, the renal problem of 1st claimant aggravated and consequently, he died. The Tribunal further observed that it is difficult to accept the evidence of P.W. 2 which is not supported by any medical record to that extent. Learned counsel argued that the Tribunal accepted the medical evidence only to the extent of the fracture injuries suffered by the 1st claimant to his left leg and evaluated compensation accordingly.

a) Coming to medical bills, learned counsel argued, Ex. A. 5 - bills contain the medical expenditure for the treatment of fractured left leg and also dialysis to the kidneys of the 1st claimant. The computerized bills would appear that they relate to the treatment and medicines for the fracture injuries whereas manual bills would appear that they relate to the kidney problem and dialysis. Therefore, the Tribunal has rightly accepted only computerized bills and awarded a sum of Rs. 14,937/- covered by those bills and rejected the remaining bills. Learned counsel submitted that P.W. 2 admitted that Ex. A. 5 - medical bills were issued by various hospitals. Therefore at best he can vouchsafe for the medical bills issued for the kidney treatment and dialysis out of Ex. A. 5 - bills. Remaining bills are concerned, he cannot depose. The claimants have not examined the doctor who treated 1st claimant to prove the medical bills. Except a few prescriptions, the claimants have not produced prescriptions for all the bills. In view of this also, learned counsel argued that the Tribunal thought it safe to accept only computerized bills which relate to the fracture injury of the leg. He relied upon the decision reported in United India Insurance Company Limited Vs. Mohd. Khaj Rasool Sayyed @ Mohd. Khaja Main Shaik and Another, on the principle that medical certificates and medical bills produced by the claimants required to be proved in the manner provided under Indian Evidence Act and mere marking of the documents through the doctors does not amount to proof of said document. Learned counsel submitted that since there is no proper proof of Ex. A. 5 - medical bills, the Tribunal has rightly accepted only those computerized bills which relate to the treatment to the fracture injuries. He submitted that there is no arbitrariness in rejecting the manual bills and hence the claimants do not deserve enhancement of compensation towards medical expenditure.

b) Secondly, learned counsel argued that rate of interest granted by the Tribunal is also a reasonable one and it needs no revision. He thus prayed for dismissal of appeal.

6. Learned counsel for respondent Nos. 1 and 2 adopted the arguments of learned counsel for 3rd respondent.

7. In the light of above divergent arguments, now the point for determination is:

Whether the compensation granted by the Tribunal is just and reasonable?

8. POINT: Before discussing the aspect whether the Tribunal erred in rejecting the manual bills covered by Ex. A. 5, it is apt to verify the medical bills covered by Ex. A. 5. A perusal of Ex. A. 5 would show that as rightly argued by learned counsel for 3rd respondent, they contain both computerized and manual bills. Some of the bills relate to the hospital charges and medicines for the treatment of the fracture injuries whereas some other bills relate to the kidney treatment i.e., dialysis and medicines for the renal problem of the 1st claimant. Before adjudicating on Ex. A. 5 - bills, it has to be seen whether 1st claimant suffered any injury to his kidneys and whether his renal problem was aggravated by the accident. Ex. X. 1 - case sheet issued by Raju Neuro and Multi Specialty Hospital, Rajahmundry, wherein the 1st claimant underwent treatment, shows that he suffered injury to medial malleolus and fibula of his left leg in the resultant accident. It is further mentioned that he was treated as inpatient from 16.12.2005 to 27.12.2005 and Open Reduction and Internal Fixation (O.R.I.F) was done by Malleolar

screws fixation. It is pertinent to note that in Ex. X. 1 nothing is mentioned about 1st claimant sustaining any injury to his kidneys. Be that as it may, Ex. A. 9 - scanning report of the 1st claimant shows that he was having multiple calculi (stones) in gallbladder. So, 1st claimant was a chronic renal patient even before accident. Even P.W. 2 also deposed this fact in his evidence. However he stated as if renal problem of 1st claimant was aggravated by road traffic accident. When there was no visible injury to kidney and the only injury suffered was to the left lower leg, it is difficult to comprehend how the renal problem would be aggravated. No proper presentation in this regard was made by P.W. 2. Therefore, the Tribunal rightly evaluated the compensation only for leg injury of the 1st claimant.

9. Then Ex. A. 5 - medical bills are concerned, as already stated supra, they cover the treatment for fracture injuries and also the kidney problem of the 1st claimant. Some of the bills are computerized bills and other bills are manual bills. Most of the computerized bills relate to the treatment of the fracture injuries. Again some of the manual bills are also related to the treatment of fracture injuries. In view of all these, it appears the Tribunal conveniently accepted only the computerized bills amounting to Rs. 14,937/-. In my view, though Tribunal was right in rejecting the bills relating to the kidney problem and dialysis, its rejection of all the manual bills cannot be approved because some of the manual bills relate to the treatment of fracture injuries are also there. In the process, the Tribunal granted only Rs. 14,937/- towards medical expenditure. In my view this amount is quite inadequate considering the fact that the claimant suffered fracture to his ulna and malleolus and that he took inpatient treatment for about 11 days (16.12.2005 to 27.12.2005) in a multi specialty hospital. So he deserves a reasonable amount towards medical expenditure for the treatment of his fracture injuries. In such consideration, the medical expenditure is enhanced from Rs. 14,937/- to Rs. 45,000/-.

10. So far as rate of interest is concerned, except carping that the interest rate granted by the Tribunal is low, the claimants have not placed any record before the Tribunal to show what was the prevailing rate of interest granted by the nationalized banks as on the date of filing O.P. In a decision reported H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another,), Hon''ble Apex Court approved the method of granting interest at the rate at which the nationalized banks are granting interest. Since claimants have not placed any record before the Tribunal, they cannot now contend that the interest is low.

11. In view of the above discussion, the compensation is enhanced by Rs. 30,063/- (Rs. 45,000/- - Rs. 14,937/-).

12. In the result, this M.A.C.M.A. is partly allowed by enhancing the compensation by Rs. 30,063/- (Rupees Thirty Thousand and Sixty Three only) with proportionate costs and interest from the date of O.P., till the date of realization. Respondents are directed to deposit the enhanced compensation amount within one month from the date of this judgment, failing which execution shall be taken out against them. Miscellaneous petitions if any pending in this appeal, shall stand closed.