

(2014) 12 AP CK 0057

Andhra Pradesh High Court

Case No: M.A.C.M.A. Nos. 1016 and 1019 of 2010

The Oriental Insurance Company
Limited

APPELLANT

Vs

V. Jayanarayana Reddy

RESPONDENT

Date of Decision: Dec. 11, 2014

Acts Referred:

- Employees Compensation Act, 1923 - Section 4A
- Motor Vehicles Act, 1988 - Section 166, 171

Citation: (2016) 1 ACC 944 : (2015) ACJ 2594 : (2015) 2 AnWR 472

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

Bench: Single Bench

Advocate: Bathula Venkateswara Rao, Advocate for the Appellant; A.V.S. Satish Babu, Advocate for the Respondent

Judgement

U. Durga Prasad Rao, J.

Aggrieved by the Award dated 04.07.2006 in O.P. No. 319 of 2004 passed by the Chairman, MACT cum II Additional District Judge, Madanapalle (for short the Tribunal), both Oriental Insurance Company Limited and claimant preferred M.A.C.M.A. No. 1016 and 1019 of 2010 respectively.

2. The facts in brief are that:

a) The case of the claimant is that on 14.10.2002 at about 10:00 am, when he was proceeding from Madanapalle to Galivedu of Kadapa District on his Hero Honda motorcycle bearing No. TN 20 H 2649 and when he reached Nallagutta on Peddamandyam Galivedu road, one mini lorry bearing No. AP 02 V 1433 came in opposite direction being driven by its driver at high speed and in a rash and negligent manner and dashed the motorcycle which was stationed on the left side of the road. In the resultant accident, the claimant suffered fracture to the left hand wrist, multiple fractures to lower jaw and nose and further, he lost the upper lip of

left side and one inch length of the tongue was cut and five teeth were lost. It is averred that the accident was occurred due the rash and negligent driving by the driver of the offending mini lorry. On these pleas, the claimant filed OP No. 319 of 2004 against respondents 1 to 3, who are the owner, insurer of the mini lorry bearing No. AP 02 V 1433 and owner of the motorcycle bearing No. TN 20 H 2649 respectively and claimed Rs. 13,00,000/- as compensation under different heads.

b) Respondent No. 1 remained ex parte.

c) Respondent No. 2 opposed the claim denying all the material averments made in the petition and contended that there was no rash and negligent driving by the driver of the mini lorry; the driver of the vehicle had no valid driving licence and that claim is excessive and thus prayed to dismiss the OP.

d) Respondent No. 3 contended that the claimant took his vehicle without his knowledge. He further contended that the charge sheet was filed against the driver of the offending mini lorry, who pleaded guilty and paid fine amount and hence he is not liable to pay any compensation.

e) During trial, PWs. 1 to 5 were examined and Exs. A.1 to A.15 and Exs. X.1 and X.9 were marked on behalf of claimants. RW. 1 was examined and Ex. B.1 was marked on behalf of respondents. CW. 1 was examined as Court Witness and Ex. C.1 was marked through him.

f) The Tribunal on appreciation of both oral and documentary evidence on record, has awarded a sum of Rs. 6,00,000/- with costs and interest at 7.5% p.a. under different heads as follows:

The Tribunal exonerated the R.3 and fastened the liability on respondents 1 and 2.

Hence the appeals: 1) MACMA No. 1016 of 2010 by the Insurance Company and 2) MACMA No. 1019 of 2010 by claimant.

3. The parties in these appeals are referred as they stood before the Tribunal.

4. Heard arguments of Sri Bathula Venkateswara Rao, learned counsel for appellant/Insurance Company in MACMA No. 1016 of 2010 and 2nd respondent in MACMA No. 1019 of 2010; Sri A.V.S. Satish Babu, learned counsel for appellant/claimant in MACMA No. 1019 of 2010 and 1st respondent in MACMA No. 1016 of 2010. R.3 shown as not necessary party in MACMA No. 1016 of 2010 vide cause title. Notice to R.3 was unserved in MACMA No. 1019 of 2010.

5. a) Criticizing the quantum of compensation as low, learned counsel for claimant (appellant in MACMA No. 1016/2010) firstly argued that claimant besides suffering multiple fractures on his wrist and lower part of his face, lost his teeth and a part of his tongue was cut and he suffered permanent disability due to which he is now unable to pursue his Advocate profession as earlier and thereby suffered loss of income. In spite of it, the Tribunal did not grant any compensation for loss of

earning power due to disability by adopting multiplier system. He thus prayed to award compensation on that ground. He relied upon the decision reported in [Rekha Jain Vs. National Insurance Company Ltd. and Others](#), on the aspect of computation of compensation for loss of future income.

b) Secondly, learned counsel argued that due to accident claimant suffered disfigurement of his mouth and face but the Tribunal awarded a paltry sum of Rs. 50,000/- and therefore, compensation needs to be enhanced in this regard.

c) Thirdly, learned counsel argued that the claimant is entitled to interest from the date of accident but not from the date of filing the O.P. as held by the Tribunal. In this regard, he relied upon the decision reported in [Saberabibi Yakubhai Shaikh and Others Vs. National Insurance Co. Ltd. and Others](#). Thus, he prayed to allow his appeal and enhance the compensation and also dismiss the appeal filed by the Insurance Company.

6. a) Per contra, learned counsel for Insurance Company (appellant in MACMA No. 1016 of 2010) firstly argued that the accident was occurred due to the fault of the claimant himself as he drove the motorcycle of third party (third respondent herein) without having valid driving licence and the Tribunal failed to consider this aspect but just carried away by the fact that the driver of the mini lorry admitted his guilt before the Criminal Court and fixed liability on the lorry driver.

b) Secondly, challenging the quantum of compensation learned counsel argued that the Tribunal erroneously awarded Rs. 3,00,000/- towards medical expenditure even though the claimant failed to prove the authenticity of the medical bills.

c) Thirdly, he argued that the claimant has not suffered any disability or disfigurement of the face but the Tribunal erred in awarding Rs. 50,000/- each for the alleged permanent disability and disfigurement. He thus prayed to allow the appeal and reassess the compensation. He also prayed for dismissal of the appeal filed by the claimant.

7. In the light of above rival arguments, the points for determination in these appeals are:

1) Whether the compensation awarded by the Tribunal is factually and legally sustainable or needs interference?

2) To what relief?

8. a) POINT: The first argument on behalf of Insurance Company is that the accident was occurred due to the fault of the claimant himself as he drove the vehicle of R.3 without having valid driving licence and he himself went and dashed the mini lorry and as such it was a matter of collision between the two vehicles. On perusal of the evidence on record, I am unable to accept this contention. The claimant as PW. 1 and his pillion rider as PW. 2 have clearly narrated the method and manner of

occurrence of accident. Their evidence is to the effect that when they reached Nallagutta on Peddamandaya Galivedu Road, they saw the offending mini lorry coming in the opposite direction being driven by its driver at a high speed and in a rash and negligent manner. Therefore, PW. 1 took his vehicle on the left side of the road and stopped. In spite of it, the mini lorry driver dashed against the motorcycle and caused the accident. PWs. 1 and 2 were cross-examined at length but their narration of the accident could not be shattered. Most importantly, no suggestion was given to the PW. 1 the claimant to the effect that he had no driving licence and that he did not know the driving and therefore, he was responsible for the accident. Further, when the mini lorry driver was examined as Court Witness, no suggestion was given to him to the effect that the accident was occurred not due to his fault but owing to the fault of the claimant. Thus, the Insurance Company cannot now contend that the claimant was responsible for the accident but not the mini lorry driver. Hence the said argument is rejected.

9) The second argument of the Insurance Company is that the Tribunal erred in awarding Rs. 3,00,000/-towards medical expenditure without proper proof. It may be noted that the petitioner produced medical bills covered by Exs. A.4, A.5 and A.12 and prescriptions under Ex. A.7. These medical bills cover an amount more than Rs. 4,00,000/-. The Tribunal in Para 13 of its award observed that though PW. 3 has deposed about the bills issued by his Hospital but the relevant registers with reference to the bills were not produced. However considering the multiple fractures suffered by the claimant and his undergoing several operations and having expert treatment as deposed by PW. 3, the Tribunal awarded a sum of Rs. 3,00,000/- towards medical expenditure and other incidental expenditure viz. nourishment and transport charges. I have gone through the evidence of PW. 3 and perused the medical bills. He avouched that Ex. A.4 medical bills were issued from his hospital. Having regard to the fact that the claimant suffered multiple fractures and underwent prolonged treatment in a private hospital at Bangalore and also later under PW4 the dentist, the medical and other incidental expenditure of Rs. 3,00,000/- as awarded by the Tribunal appears to be reasonable one and therefore, I find no exaggeration or exorbitance in the compensation awarded under that head.

10. The third argument of the Insurance Company is that the claimant has not suffered any disability or disfiguration of the face and hence compensation of Rs. 50,000/- each in this regard is unjust.

a) In this regard, the oral evidence of PW3 Dr. C. Krishna Rao, Casualty Medical Officer, St. Johns Medical College Hospital, Bangalore and PW4 Dr. Chandra Mohan Naidu, Dentist, Madanapalle coupled with Exs. A3 disability certificate would show that in the resultant accident the claimant suffered disfiguration of his face due to fracture of Mandible (lower jaw), Maxillary bones, loss of four upper and lower teeth. Further, he suffered fracture of left wrist. He also suffered partial loss of tongue with speech defects. Above all, during hospitalization he developed Deep Vein

Thrombosis (DVT) in the left leg which could be life endangering one, if the thrombus (blockage) gets dislodged and blocks important veins in lungs, heart and brain. For the above injuries the claimant took treatment in St. Johns Medical College Hospital, Bangalore and also with PW4 at Madanapalle. PW3 issued Ex. A3 disability certificate taking a holistic assessment of all the disabilities. According to him, the claimant suffered 65% of physical disability with reference to the whole body. The Tribunal in para-10 of its award discussed this aspect but it was not totally convinced with 65% disability on the observation that PW3 has not explained the basis under which he assessed the 65% disability. The Tribunal, however, agreed that claimant suffered some extent of disability. On this observation, the Tribunal awarded Rs. 50,000/- for permanent disability (i.e. for loss of amenities) and another Rs. 50,000/- for disfigurement caused to the face.

b) Both the claimant as well as Insurance Company challenged this finding Insurance Company on the ground that claimant has not suffered any disability or disfigurement and so, he does not deserve compensation of Rs. 50,000/- each; whereas the claimant on the argument that the Tribunal has not awarded compensation for loss of earning power due to tongue cut and consequent difficulty in attending his advocate profession.

c) The argument of Insurance Company is concerned, I am afraid, it is fallacious. Because of fracture of jaws and facial bones and loss of teeth and also due to tongue-cut, certainly the claimant has suffered disability and disfigurement of his face. Hence, the Tribunal cannot be found fault for granting compensation in that regard.

d) So far as the contention of claimant is concerned, it is true that due to loss of teeth and tongue-cut the claimant would face difficulty in attending his advocate profession. Needless to emphasize the fact that a good oratory skill is must for a successful lawyer. The artificial denture and cut in the tongue about one inch or so will certainly interdict his vocal faculties to some extent and adversely affect his profession. Hence, he deserves compensation for loss of earning power. However, we do not have data in the form of evidence as to what is the extent of loss of his speech so as to assess the compensation. It does not appear that he is totally deprived of his speaking ability but only faces difficulty in pronouncing some tongue twisting words and phrases and also speaking lengthy sentences at one stretch. Considering all these, I am of the view that a sum of Rs. 75,000/- will meet the ends of justice.

11. Then what remains for determination is the argument of the claimant that he deserves interest from the date of accident but not from the date of filing of OP as awarded by the Tribunal. I am afraid, this argument is not correct. The claimant relied upon the decision of the Apex Court reported in *Saberabibi Yakubhai Shaikhs* case (2 supra). In that case, the Supreme Court having regard to Section 4A of Employees Compensation Act, 1923 and also its earlier judgment rendered in

Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, held that employer is liable to pay interest to the workmen from the date of accident but not from the date of petition or the award of the Commissioner. It must be said that the present case is one filed under Section 166 of Motor Vehicles Act, 1988 (for short MV Act) and hence awarding of compensation and interest are governed by MV Act. Sofar as awarding of interest is concerned, Section 171 of MV Act is very much clear and emphatic, which reads thus: Section 171 -Award of interest where any claim is allowed:-Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

Hence, I find no merits in the contention of claimant.

Thus, the total compensation payable to the claimant is as follows:

So, the compensation is enhanced by Rs. 75,000/- (Rs. 6,75,000/- minus Rs. 6,00,000/-).

12. In the result, in view of the above discussion, the two MACMAs are ordered as follows:

1. MACMA No. 1019 of 2010 filed by the claimant is partly allowed and compensation is enhanced by Rs. 75,000/- with proportionate costs and simple interest at 7.5% p.a. from the date of OP till the date of realization.
2. The respondents 1 and 2 are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.
3. MACMA No. 1016 of 2010 filed by the Insurance Company is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.