

-
-
HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.427 of 2013

JUDGMENT:

This appeal is filed by the insurance company against the order dated 14-12-2005 passed in OP No.519 of 2003 by the Motor Accident Claims Tribunal-cum-III Addl. District Judge (FTC), Kadapa, wherein the Tribunal, as against the claim of Rs.3,00,000/-, granted compensation of Rs.60,000/- towards the injuries sustained by the 1st respondent-claimant in the motor accident that occurred on 11-01-2002.

2. Facts stated are:-The claimant on the fateful day at about 8-30 pm was returning home from Rayachoty on his TVS 50 vehicle and when he reached near Middekadapalli village, the driver of the auto bearing registration no.AP 04T 6658 drove it in a rash and negligent manner with high speed, gave dash to the claimant's motor cycle, due to the impact of the same, the claimant fell down and sustained fracture injuries.

3. Learned counsel for the appellant-insurance company contended that the driver of the auto in question, which hit the claimant, was not supposed to carry gas cylinders when it was meant to carry passengers, and thus violated the conditions of policy, the insurance company is not liable and respondent no.2-owner of the auto in question alone is liable to pay the compensation to the claimant. On the other hand, learned counsel for claimant-respondent no.1 contended that

though the driver of the auto in question was carrying gas cylinders when it was meant to carry passengers, it amounts to only violation of policy condition, but the auto is covered by a valid policy. Learned counsel further contended that by applying the principle laid down by the Supreme Court in *NATIONAL INSURANCE COMPANY LIMITED vs. SWARAN SINGH* (2004 ACJ 1) the insurance has to pay the compensation to the claimant and recover from the owner of the auto in question. Learned counsel also submitted that the compensation awarded by the Tribunal is very low and does not commensurate with the injuries sustained by the claimant.

4. There is no dispute as to the date and nature of the accident and the fact that the claimant sustained injuries in the said accident. The only dispute is with regard to the quantum of compensation and the liability of the insurance company to pay the compensation.

5. To prove his claim, the claimant himself filed affidavit in lieu of examination as PW-1. Ex.A-2 is the injury certificate wherein the claimant is shown to have sustained two grievous injuries, and other simple injuries. These injuries sustained by the claimant were certified by the doctor who treated the claimant, examined as PW-2. According to the evidence of PW-2 the claimant sustained malunited fracture femur and malunited fracture right pubic and the disability sustained by the claimant was assessed at 40%. Ex.A-4 is the disability certificate issued by PW-2 doctor.

Exs.A-2 and A-4, coupled with the evidence of PWs.1 and 2 prove that the claimant sustained injuries. The Tribunal granted Rs.20,000/- towards medicines, extra-nourishment and attendant benefits, Rs.10,000/- towards pain and suffering, Rs.5,000/- towards transportation chargers, and Rs.25,000/- towards of loss of earnings and partial disability totalling to Rs.60,000/-. The compensation granted by the Tribunal is based on acceptable evidence and the same does not warrant any interference.

6. So far the question of liability to pay the compensation is concerned, in the light of the decision in *Swaran Singh's* case supra, the appellant-insurance company is liable to pay the compensation to the claimant and recover from the owner of the auto in question in the view of the fact that auto in question is covered by valid policy.

7. In the result, the appeal is disposed of and the order of the Tribunal is modified to the extent indicate above. Miscellaneous petitions, if any pending in this case shall also stand disposed of. There shall be no order as to costs.

REDDY, J

A. RAJASHEKER

Dated: 30th December, 2015
NRG

-
-
-
-
-
-
-

-
-
-
-
-
-
-
-
-
-
-
-
-
-

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.427 of 2013

-

//WEB//

NRG

DATED 30-12-2015