

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.1610 of 2004

JUDGMENT:

The injured-claimant who maintained the claim in OP.No.705 of 1997 under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum–District Judge, Nizamabad(*for short, 'Tribunal'*) against the owner and insurer of the crime jeep bearing No.AP15E 765 covered by Ex.B.1 policy for the fracture to her right scapula, and injury to left leg, chest, back side of the body in the motor accident caused by the crime vehicle due to rash and negligent driving of its driver while the claimant was inmate, for the claim of Rs.1,20,000/- since granted Rs.42,054/- with interest at 9%p.a. by fixing liability against 1st respondent-owner of the crime vehicle, preferred the appeal impugning the award dated 20.01.2004 with the contentions in the grounds of appeal as well as submission of his counsel during course of arguments that the compensation awarded by the tribunal is unjust and utterly low, that the tribunal ought to have awarded the compensation as prayed for since the claimant sustained fracture injury to her right shoulder and therefrom she was unable to lift to her right hand, that the tribunal erred in not considering the 50% permanent disability as per the Ex.C.1 disability certificate issued by the P.W.2 doctor and also his evidence and the tribunal failed in awarding just compensation under various heads, hence to set aside the award of the tribunal and grant compensation as prayed for by allowing the appeal.

2. Whereas, it is the contention of the learned counsel for the contesting 2nd respondent-Insurer that the award of the tribunal holds good and for this Court while sitting in the appeal there is nothing to interfere with the said reasoned award, hence, to dismiss the appeal.

3. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

4. Now the points that arise for consideration are:-

1) Whether the compensation awarded by the tribunal is unjust and utterly low and requires interference by this Court while sitting in appeal to set aside, if so, with what compensation and what objections?

2) To what result?

Point No.1:

5. There is no dispute as to the manner of accident but for quantum of compensation. As per the IRDA regulations dated 16.11.2009 (referring to Circular dated 18.03.1978 issued by Tariff Advisory Committee and further as per the Circular of IRDA dated 03.12.2009 unless the policy is a package policy covering risk of the inmates of the private car or pillion rider of the two wheeler by payments of contractual liability as additional coverage to undertake the Act policy will not cover said risk. For that the Apex Court in **NIC Vs. Balakrishnan** referring to further expressions so concluded. Even the Apex Court in **Sanjeev kumar Samrat Vs.NIC and Divisional Manager, National Insurance Co. Ltd. v. Saju P. Paul** hold that unless there an additional coverage of risk by any package policy, the Act policy will not cover the risk other than those enumerated in Sub-clauses (a), (b) and (c) of proviso (i) to Section 147 (1) of the M.V.Act. From this, a perusal of Ex.B.1 policy also shows it is only an Act policy and not covers the risk by payment of any additional premium for the inmates of the car and the sole claimant-injured was inmate of the car. Thus, for this Court while sitting in appeal, there is nothing to interfere with the reasoned award of the tribunal. Accordingly, Point No.1 is answered.

POINT No.2:

6. In the result, the appeal is dismissed. There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 10.04.2015

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