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düJä)+D,0Í,ø)Ñ0FþÑ0+DÙ THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI CIVIL MISCELLANEOUS APPEAL No.2348 of 2004 JUDGMENT: The injured-claimant had preferred this appeal under Section 173 of the Motor Vehicles Act assailing the award dated 13.05.2004 of the learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Cuddapah passed in M.V.O.P.No.514 of 2002. 2. I have heard the submissions of the learned counsel for the appellant/claimant ('the claimant' for brevity) and the learned counsel for the 2nd respondent-Oriental Insurance Company Limited. 3. The appeal against the 1st respondent/owner-cum-insured was dismissed for default. Even though the appeal was dismissed against the said respondent, the statutory liability of the insurance company survives for consideration. Similarly, since there is a contract, the contractual liability of the Insurance Company also survives. There is no need for the presence of the owner of the vehicle/1st respondent to decide the question of statutory liability as well as the contractual liability of the Insurance Company at the appellate stage in cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company. The above view of this Court finds support from a judgment of a Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others. 4. The facts leading to the filing of the present appeal by the claimant and the case of the claimant, in brief, are as follows: On 06.06.2001, evening, the appellant/claimant along with her relatives and others had started in a Jeep bearing registration No.AP04-B7576 of the 1st respondent at Rayachoti to go to Cuddapah. At about 6 pm, when the said Jeep had reached a place near Anjaneyaswamy Temple at Guvvalacheruvu Ghat on Rayachoty-Cuddapah main road, the driver of the said Jeep drove the said vehicle at a high speed and in a rash and negligent manner and in the process had lost control over the vehicle. As a result, the Jeep had capsized. The appellant had sustained fracture of bones of her right leg i.e., fractures of tibia and fibula, besides contusion over the middle of the head. She was admitted in Government Hospital, Cuddapah. She had received 10 days inpatient treatment. She was later shifted to a private Nursing Home in Cuddapah. In the said hospital, she underwent an operation and the fractures of bones were corrected by fixing implants. She had spent Rs.30,000/- on her treatment, which she had received in both the hospitals. Despite receiving treatment, the injuries did not heal completely. She is unable to move and walk freely and attend to her tailoring work. The movements of her right leg were restricted. She is undergoing treatment even as on the date of filing of the claim petition. She had suffered permanent disability and lost her earning capacity. She had appointed a maidservant by paying Rs.1,000/- per month to attend to the household work. Therefore, she had filed the claim petition claiming a compensation of Rs.2,00,000/- from the respondents 1 and 2 who are the owner-cum-insured and the insurer of the said Jeep. The 1st respondent had remained ex parte before the Tribunal; The 2nd respondent had filed a written statement resisting the claim on various grounds. At trial, the claimant and a Doctor were examined as PWs 1 and 2 and exhibits A1 to A11 were marked on the side of the claimant. The Officer of the Insurance Company was examined as RW 1 and exhibits B1 and B2 were marked on the side of the 2nd respondent-Insurance Company. On merits, the Tribunal, having held that the pleaded accident resulting in injuries to the claimant had occurred due to the rash and negligent driving of the driver of the Jeep, had awarded a compensation of Rs.35,000/- with interest at 9% per annum simple from the date of the petition till the date of payment or realisation, recoverable along with proportionate costs from the 1st respondent; the Tribunal had, however, dismissed the claim petition against the 2nd respondent-Insurance Company. Aggrieved by the said award, the claimant had preferred this appeal. 5. (a) The learned counsel for the claimant would contend as follows: "The appellant had sustained serious fracture injuries to the bones of her right lower limb. At the time of accident, she was of 45 years of age. She was a housewife and a tailor. She had examined herself and a Doctor who had treated her and issued the disability certificate certifying that she had suffered permanent disability to the extent of 40%. In spite of establishing the pleaded case by the claimant, the Tribunal had awarded a meagre amount of Rs.35,000/-. The Tribunal did not award compensations under all the eligible heads as per the settled legal position, and a lump sum amount of Rs.35,000/- was awarded contrary to the settled legal propositions. The Tribunal ought to have awarded compensation under the heads of 'injury', 'shock', 'pain and suffering', 'loss of earnings' (past, present and future) 'permanent disability', 'medical and incidental expenses' including the expenses on transport and arttendant, 'loss of prospects of life', 'loss of amenities of life', 'loss of enjoyment of life', 'loss of opportunities of life' (economical, politic and social), 'loss of pleasures of life', 'loss of expectation of life' and 'social disability'. The Tribunal had erroneously exonerated the 2nd respondent-Insurance Company from the liability. The policy copy filed and exhibited as exhibit B2 would show that it is a comprehensive package policy and Rs.509/- was paid to cover the liability of the public. Since the policy is a comprehensive package policy, the policy covered the risk of the inmates of the Jeep. Without properly appreciating the oral and documentary evidence, the Tribunal had erroneously fastened the liability only against the 1st respondent/owner by exonerating the Insurance Company. The Tribunal ought to have awarded just and fair compensation, if need be in excess of the amount claimed as per the settled legal position and ought to have directed both the respondents to pay the compensation awarded to the claimant. Therefore, the appeal be allowed and just reasonable and fair compensation recoverable from both the respondents be awarded". (b) On the other hand, the learned counsel for the 2nd respondent/Insurance Company would contend as follows: "The Tribunal having considered the oral and documentary evidence had rightly determined the compensation awardable to the claimant at Rs.35,000/-. The Doctor-PW 2 has not treated PW 1; therefore, his evidence regarding the disability and exhibit A5-Certificate given by him certifying the disability to the extent of 40% is not a credible piece of evidence. The claimant did not examine any person to prove the medical expenses. Though she had contended that she had engaged the services of a maidservant by paying Rs.1,000/- per month, the said maidservant was not examined. Therefore, the Tribunal has properly appreciated the oral and documentary evidence and had awarded just compensation. There is no material to award enhanced compensation. The Insurance Company examined RW 1, who is the Officer concerned. The crime record and the evidence of RW 1 would show that the driver of the Jeep at the relevant time was soliciting passengers and that the claimant and her sister-in-law had boarded the said Jeep as unauthorised passengers and had travelled as fare paid passengers in the said Jeep along with others and that while they were so travelling in the Jeep, the Jeep had met with an accident. Therefore, since the claimant had travelled as fare paid passenger and the policy does not cover the risk of such passengers/inmates of the Jeep, the Tribunal has rightly exonerated the Insurance Company and did not fasten any liability on the Insurance Company. The Insurance Company is not liable to pay any compensation as held by the Tribunal; and the 1st respondent/owner-cum-insured is alone liable to pay the compensation, if any, payable to the claimant. The appeal is devoid merit. 6. The points that arise for determination in this appeal are: (i) Whether the compensation awarded by the Tribunal is not just, reasonable and fair as contended by the claimant? And if so, what shall be the just, reasonable and fair compensation to be determined and awarded to the claimant in the facts and circumstances of the case? (ii) Whether the Tribunal committed an error in exonerating the 2nd respondent-Insurance Company from the liability to pay the compensation awarded to the claimant? And if so, whether the 2nd respondent-Insurance Company is also liable to pay the compensation awarded to the claimant? 7. POINT NO.1: (a) As regards the injuries and allied aspects, the case of the claimant is this: "She had sustained fractures of bones of her right leg viz., tibia and fibula and also a contusion on her head. She was initially admitted in the Government Hospital and had received treatment as an inpatient for 10 days; later she was shifted to a private nursing home. She had undergone an operation and the fractures of bones were corrected by fixing implants. As on the date of the claim petition, she was still receiving treatment and she had spent Rs.30,000/- towards medical expenses. Despite treatment, the injuries did not completely heal. She is unable to move or walk freely and the movements of her right leg are restricted and she is not able to attend to household duties and her tailoring work. She had lost her earnings and earning capacity. The Doctor had certified that she had suffered permanent disability. She went to Mumbai for further treatment and she had received treatment at K.B.B.H.Hospital, Mumbai and had spent Rs.50,000/-. She was treated by Doctor Kamal at Mumbai. She had also received treatment from Bhabha Hospital, Mumbai and she had stayed at Mumbai for four months. During the said period she had lost her earnings. She had availed the services of a maidservant by paying Rs.1,000/- per month." In her evidence, her wound certificate-exhibit A3, the certificate of operation issued by a Hospital at Mumbai-exhibit A6, the original O.P chit issued by the Government Hospital, Cuddapah-exhibit A7, admission and operation record issued by K.B.B.H.Hospital, Mumbai-exhibit A8, Medical reports of K.J.S.H., Mumbai-exhibit A9, a bunch of 14 prescriptions-exhibit A10 and a bunch of three X-ray films-exhibit A11 were marked. She had maintained her stand in her cross examination. When it was suggested that medical bills were concocted and that she had received treatment only from Government Hospital and that she did not incur any medical expenses, she had denied the

said suggestions. She had also denied the suggestion that 1st respondent alone is liable to pay the compensation. (b) PW 2, the Doctor, who is said to be a specialized Orthopedist since 1996, had testified that he had examined PW 1 on 22.07.2003 and that he had found that she is having disability to the extent of 40% on account of old fracture of bones of her right leg and that there is shortening of right lower limb by 1" and that she was also having pain in leg muscles. In his cross examination, he had admitted that he had not treated PW 1 and that he had examined her only for the purpose of issuing disability certificate. When it was suggested to him that PW 1 did not suffer any disability and that there is no shortening of leg, he had denied the said suggestions. (c) Exhibit A3-the copy of wound certificate of PW 1 would show that she had sustained the following injuries: Tenderness area over the right foot and lower part of leg. Contusion over the middle of head ¼" x ¼" The wound certificate on a perusal also would show that X-ray taken had revealed fracture of tibia and fibula lower 1/3rd of right leg. The said injury was certified as grievous in nature. As already noted, exhibit A5 is the disability certificate of PW 1 issued by PW 2. Exhibit A7-Original O.P. chit issued by A.P.Vaidya Vidhana Parishad would show that PW 1 had received inpatient treatment from 07.06.2001 to 12.06.2001. Exhibit A8 is a Follow Up Card issued by Brihanmumbai Mahanagarpalika Hospital. The same shows that PW 1 had received inpatient treatment from 02.10.2002 to 09.10.2002 and that during the said period of treatment sequestrectomy and debridement was done by Dr.Kamal. Exhibit A9 is the report of culture and antibiotic susceptibility of PW 1 issued by K.J. Somaiya Hospital and Research Centre, Mumbai. Exhibit A10 is a bunch of medical prescriptions. (d) Thus, a careful perusal of the oral and documentary evidence would show that PW 1 had sustained a major fracture of both bones of her right lower limb, besides one simple injury on her head. Even simple injuries cause painful experience to the victim and take a minimum of two to three weeks' time for complete healing. Fracture injuries take a time of one or two months for total healing depending upon the nature of the injuries and other factors. A further time of one or two months is generally required for physiotherapy and getting normal movements of the limb. The shock, pain and suffering at the time of accident, pain, discomfort and inconvenience during the period of treatment, hospitalization, bed rest and physiotherapy can be visualized taking into consideration the day to day human experience. Therefore, a compensation of Rs.60,000/- is awarded under the heads 'injury', 'shock', 'pain' and 'suffering'. (e) As regards hospital, medical, transport, attendant, extra nourishment and other expenses, it is to be noted that the claimant had pleaded that she had received treatment first in the Government Hospital and later in a private hospital and that she had spent Rs.30,000/- on her treatment and that she had also engaged the services of a maidservant by paying Rs.1,000/- per month for attending to the household work. However, in her evidence PW 1 had stated that she had received treatment from a hospital at Mumbai; and, she had also produced medical record to that effect. The medical record shows that she had received inpatient treatment in two hospitals in two spells i.e. in the Government hospital and in a Hospital at Mumbai. In her evidence, she had stated that she had spent Rs.50,000/- on the treatment she had received from Dr.Kamal at K.B.B.H.Hospital, Mumbai. She had filed medical bills in a bunch for Rs.36,785/- under Exhibit A4. However, she had not examined any person connected with the medical bills, as rightly contended by the learned counsel for the 2nd respondent-Insurance Company. It is common knowledge that patients receiving treatment even in a Government Hospital also incur expenditure on medicines purchased from outside, transport, extra nourishment, attendant, besides other incidental charges. During the period of hospitalization and bed rest, a person might have attended on the claimant cannot be disputed. In a decision in Managing Director, APSRTC v. Kathavath Gopal and another this Court had held that compensation towards expenditure incurred on extra nourishment and transport cannot be denied even though treatment was given in a Government Hospital and that one cannot expect positive evidence proving actual expenditure and hence, some reasonable hypothesis cannot be ruled out. In this case, there is sufficient evidence to prove that PW 1 had received inpatient treatment from a private hospital at Mumbai also. She had also asserted in her evidence that she had received treatment from a hospital at Mumbai for four months. She had received treatment for more than two weeks in all as inpatient is born out by the record. In the facts and circumstances of the case, a sum of Rs.35,000/- is awarded as compensation under the heads of 'hospital, medical, extra nourishment, attendant's, transport and incidental charges'. (f) As regards the claim under loss of earnings (past, present and future), it is to be noted the claimant is a house wife. Though she had deposed that she is a tailor and she used to do tailoring work and earn Rs.100/- per day, there is no reliable evidence on the said avocation and income of the claimant. She did not examine any of her customers to show that she was doing tailoring work. Therefore, in the absence of any credible evidence that she was an earning member, no compensation need be awarded under the head 'loss of earnings (past, present and future). It may be noted that the amount spent on attendant during her period of hospitalization and bed rest was already considered while awarding compensation under the head 'medical and other expenses'. (g) Coming to the claim under head 'permanent disability', the evidence in this regard was already discussed supra. The Doctor, who had treated PW 1 has not issued any disability certificate. She did not produce any disability certificate issued by the District Medical Board. She had produced the certificate issued by PW 2, who had admittedly not treated her. PW 2 had certified that PW 1 is having disability on account of old fracture of bones of right leg and that the said bones are mal-united and that there is shortening of right leg by 1" and that PW 1 was getting pain in leg muscles. However, he did not state as to how the said disability is going to interfere with her daily routine works as a housewife. Be that as it may, considering that PW 1 had sustained major fractures, the functional disability is assessed at 20%; and, since the disability is only assessed with reference to one of the lower limbs, which is 1/6th of the whole of body, a sum of Rs.20,000/- is awarded under the head 'permanent disability'. (h) Coming to the claims under the group of heads 'loss of prospects of life', 'loss of amenities of life', 'loss of enjoyment of life', 'loss of opportunities of life' (economical, political and social), 'loss of pleasures of life', 'loss of expectation of life' and social disability' and other group of heads, what is to be noted is that this court had accepted that PW 1 had suffered functional disability to the extent of 20%. Therefore, in the well considered view of this court, the claimant is entitled to Rs.20,000/- as compensation under the aforementioned group of heads. Accordingly, the claimant is entitled to the compensation as detailed below: Sl. No.Head of compensationAmount (in Rs.)(1)Injury, shock pain and suffering60,000-00(2)Hospital, medical, extra nourishment, attendant's, transport and incidental charges including future medical expenditure35,000-00(3)Loss of earnings (past, present and future)-Nil-(4)Permanent disability20,000-00(3)Loss of amenities of life, loss of expectation of life and social disability20,000-00Total (Rupees one lakh thirty five thousand only) 1,35,000-00 (i) In the facts and circumstances of the case, the claimant is not entitled to any other compensation amounts. The rest of the claim is disallowed. Thus, as per the determination supra, the just, reasonable and fair compensation to which the claimant is entitled to is Rs.1,35,000/. The said compensation is accordingly awarded. The point is accordingly answered. 8. Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award interest at the rate of 7.5% per annum simple thereon. 9. POINT NO.2: (a) The case of the claimant is that Exhibit B2-Insurance Policy is a comprehensive package policy and that premium was collected to cover the risk of passengers/inmates of the Jeep and that therefore, the Tribunal erred in not considering the contents of Exhibit B2 policy and in not fastening the liability on the Insurance Company. (b) On the other hand, the learned counsel for the 2nd respondent-Insurance Company having placed reliance on the evidence of RW 1 would contend that the driver of the Jeep had solicited passengers and that the injured claimant is one of the fare paid passenger in the Jeep at the time of accident and that she had travelled as fare paid passenger in the Jeep and hence, the 2nd respondent-Insurance Company is not liable and therefore, the Tribunal had rightly exonerated the 2nd respondent-Insurance Company from any liability to pay the compensation. 10. I have perused the evidence of RW 1. RW 1 had reiterated the defence of the Insurance Company. A perusal of Exhibit B2 policy would show that a basic premium of Rs.509/- was collected and additional Rs.500/- was also collected under PATSI covering the risk of 10 passengers. The policy is admittedly a comprehensive package policy. In that view of the matter, the fact that the claimant had travelled in the insured jeep as a fare paid passenger would not make any difference, as the policy covers risk of passengers like the claimant herein. The polcy was in force at the time of the accident is not in dispute. Therefore, the Tribunal had committed an error in exonerating the insurance company from the liability to pay the compensation, without looking into exhibit B2 policy. Viewed thus, this court finds that the 2nd respondent-Insurance Company is jointly and severally liable along with the 1st respondent-owner-cum-insured to pay compensation awarded to the claimant. Having regard to the fact that the policy is a comprehensive package policy, it must be held that the decision relied on by the learned counsel for the 2nd respondent-Insurance Company in National Insurance Co.Ltd. v. Prema Devi is not helpful to advance the case of the 2nd respondent-Insurance Company. The 2nd point is accordingly answered. 11. In the result, the appeal is allowed, in part, with proportionate costs awarding a total compensation of Rs.1,35,000/- (Rupees one lakh thirty five thousand only). On the compensation already awarded, the Tribunal had granted interest at 9% per annum simple from the date of petition till the date of realisation. Having regard to the facts and circumstances, the 2nd respondent-Insurance Company is directed to pay by way of demand draft in favour of the appellant/claimant the enhanced portion of compensation i.e., Rs.1,00,000/- (Rupees One Lakh only) with interest at

7.5% per annum simple from the date of the original petition till the date of payment or deposit and also proportionate costs or in the alternative deposit the same before the Tribunal within two months from the date of the receipt of a copy of this judgment. The already awarded compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be paid or deposited accordingly. In case of deposit of the said sums before the Tribunal, the claimant is entitled to receive the same without furnishing any security. Pending miscellaneous applications, if any, shall stand closed in consequence.

______________________________ M.SEETHARAMA MURTI,J Date: 01.05.2015 Dsr 2001(1) ALD 453 (DB) 2003(5) ALD 198 (2008) 5 SCC 403 PAGE PAGE 14 MSRM,J CMA.2348 of 2004

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