HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1069 OF 2009

AND

CROSS OBJECTIONS (SR) NO.20821 OF 2009

COMMON JUDGMENT:

This appeal is filed by the insurance company, and cross objections are filed by the claimants, assailing the judgment and award dated 20.11.2008 passed in M.V.O.P. No.223 of 2004 on the file of the Motor Accidents Claims Tribunal–cum-IV Additional District Judge, Kadapa.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: On 01.2.2003, in the morning hours, the petitioner along with others boarded jeep bearing No.AP 03E 2007 at Rajampet to go to Tirupati. When the jeep reached Mamandur village, the driver of the jeep had driven the same in a rash and negligent manner, due to which he lost control over the vehicle and hit right side hillock. The accident occurred due to the rash and negligent driving of the driver of the jeep, against whom the Station House Officer, Renigunta Police Station registered a case in Crime No.11 of 2003 under Sections 338 and 279 IPC. In the accident, the petitioner sustained fracture to left leg and bleeding injuries on other parts of the body. The petitioner took treatment as inpatient in SVRR Government Hospital, Tirupati as well as Porur Hospital, Chennai and spent Rs.1,20,000/- towards medicines and treatment. The jeep, which belongs to the first respondent, was insured with the second respondent as on the date of the accident and therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.5,50,000/- to the petitioner with interest and costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying all the averments made in the petition, *inter alia*, contending that at the time of the accident, the petitioner was travelling in the jeep as unauthorized passenger in violation of the terms and conditions of the policy. The amount of compensation claimed by the petitioner,

under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the petitioner sustained injuries in motor vehicle accident on 1.2.2003 due to rash and negligent driving of the jeep bearing Registration No.AP 03E 2007, belonging to first respondent; the jeep insured with second respondent, by its driver.
2. Whether the claimant is entitled for compensation and if so to what amount and from whom?
3. To what relief?

7. During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A1 to A12, X1 and X2 were marked. On behalf of the second respondent-Insurance company, R.Ws.1 and 2 were examined and Exs.B1 and B2 were marked.

8. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of driver of the jeep and allowed the petition in part by awarding compensation of Rs.89,500/- directing the respondent Nos.1 and 2 to deposit the same jointly and severally with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the insurance company preferred the appeal and the claimant filed Cross Objections.

9. Heard Sri N.Jayasurya, learned standing counsel for the appellant-insurance company and Sri J.Seshagiri Rao, learned counsel for the claimant.

10. The contention of learned standing counsel for the insurance company is that the first respondent had violated the terms and conditions of the policy by entrusting the jeep to the driver, who was not having valid and effective driving licence as on the date of the accident, and the said fact was not taken into considered by the Tribunal. He further submitted that the Tribunal applied the incorrect multiplier. *Per contra*, learned counsel for the cross objector-claimant submitted that the Tribunal has not properly considered Ex.A4 disability certificate and awarded meager amount of compensation. He further submitted that the amount of compensation awarded by the Tribunal, under various heads, is on lower side.

11. Now the point that arises for determination in this appeal is:

> *(1) Whether the Tribunal has awarded just and reasonable compensation or not?*
>
> *(2) Whether the first respondent had violated the terms and conditions of the policy, which absolves the liability of the second respondent?*

Point No.1:

12. As per the finding of the Tribunal, on issue No.1, the accident occurred due to the rash and negligent driving of driver of the jeep. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. I am fully agreeing with the finding of the Tribunal, on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to rash and negligent driving of the driver of the jeep, which resulted in injuries to the petitioner.

13. As per the averments made in the petition, the petitioner sustained fracture to left ankle and lacerated injury on right eye lid margin. As per Ex.A2 would certificate also, the petitioner sustained fracture to left ankle and lacerated injury on right eye lid. As per the testimony of P.W.1, he took treatment in SVRR Government Hospital, Tirupati and underwent operation. Taking into consideration the nature of fracture sustained by the petitioner, the Tribunal rightly awarded an amount of Rs.20,000/- towards pain and suffering. The Tribunal also rightly awarded an amount of Rs.4,500/- towards attendant charges and Rs.3,000/- towards transportation charges. It is a known fact that the Doctors may advise the patients to take special diet for uniting of fractures. The Tribunal has not awarded any amount under the head extra nourishment. Hence, I am inclined to award an amount of Rs.3,000/- towards extra nourishment. The petitioner filed medical bills pertaining to Ramachandra Hospital, Chennai. All these bills pertain to the year 2006. The accident occurred on 01.2.2003. There is no nexus to the nature of the injuries sustained by the petitioner and the medical bills (Ex.A9) filed by the petitioner. The nature of treatment taken by the petitioner in Ramachandra Hospital, Chennai has nothing to do with the fracture and injury sustained by the petitioner in the motor vehicle accident that occurred on 01.2.2003. Taking into consideration the nature of fracture sustained by the petitioner, the Tribunal awarded an amount of Rs.30,000/- towards operation charges and treatment.

14. As per the oral testimony of P.W.2 and Ex.A4 disability certificate, the petitioner sustained disability to an extent of 45% due to stiffness to left ankle, right hip joint and right femur. It is not the case of the petitioner that he sustained fracture to right hip and right fore arm in the accident that occurred on 01.2.2003. The Tribunal has considered all these aspects and come to a conclusion that percentage of disability incurred by the petitioner is 10% only. Ex.A4 disability certificate is silent with regard to percentage of disability incurred by the petitioner due to stiffness of left ankle. Due to stiffness to left ankle, the petitioner may not enjoy his life as he enjoyed prior to the accident. Certainly, the stiffness to left ankle affects earning capacity of the petitioner to the extent of 15%, but not 10% as assessed by the Tribunal. Except self-serving testimony of the petitioner, there is no other convincing evidence to establish the income of the petitioner. Taking into consideration the age and other attending circumstances, I am of the considered view that the petitioner may earn Rs.3,000/- per month even at the age of 58 years. Certainly, the functional disability of 15% may affect the earning capacity of the petitioner to the extent of 15%. So, the loss of future earning per month comes to (15% of Rs.3,000) Rs.450/-. By the time of the accident, the petitioner was aged about 58 years. As per the decision of **Sarla Verma v DTC**, appropriate multiplier applicable for the age group of 56 to 60 years is '9'. Thus, loss of future earnings would come to (Rs.450 X 12 X 9) Rs.48,600/- instead of Rs.18,000/- as awarded by the Tribunal. The compensation awarded to the petitioner, under various heads, is as follows:

Rs.

1. Loss of future earnings : 48,600

2. Operation charges and medicines : 30,000

3. Pain and suffering : 20,000

4. Loss of earning during the period

   of treatment : 9,000

5. Attendant charges : 4,500

6. Mental agony : 5,000

7. Transport charges : 3,000

8. Extra nourishment : 3,000

Total : 1,23,100

The compensation of Rs.1,23,100/- awarded to the petitioner is fair, just and reasonable. Accordingly, point No.1 is answered.

Point No.2:

15. The oral testimony of R.W.2 coupled with Exs.B2, X1 and X2 reveals that the driver of the crime vehicle was having driving licence to drive light motor vehicle (LMV) non transport as on the date of the accident. A perusal of the record further reveals that the driver of the crime vehicle had obtained LMV transport driving licence with effect from 28.7.2004. It is not in dispute that the crime vehicle is LMV. The driving skill required to drive LMV-transport and non transport is one and the same. It is not the case of the insurance company that proximate cause for the accident is non-holding of transport driving licence by the driver of the crime vehicle.

16. In ***Kulwant Singh Vs. Oriental Insurance Co. Ltd*** the Hon'ble apex Court, while dealing with similar question, held as follows:

> 10. In S. Iyyapan v United India Insurance Co., the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:
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> > "19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."

No contrary view has been brought to our notice.

> 11. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.

As per the principle enunciated in the case cited supra, mere non-obtaining of endorsement on the driving licence by itself would not amount to violation of terms and conditions of policy so as to absolve the liability of the second respondent. The facts of the case on hand are almost identical to the facts of the cases cited supra.

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this court is of the considered view that the owner of the vehicle has not violated the terms and conditions of the policy so as to absolve the liability of the insurance company. Accordingly, the point is answered against the insurance company.

18. In the result, the MACMA No.1069 of 2009 is dismissed without costs. Cross Objections (SR) No.20821 of 2009 are allowed in part enhancing the quantum of compensation from Rs.89,500/- to Rs.1,23,100/-. The respondent Nos.1 and 2 are jointly and severally liable to pay the same with proportionate costs and interest at 7.5% per annum from the date of petition till the date of deposit. The respondents shall deposit the same within a period of two months from the date of receipt of a copy of this order. Miscellaneous petitions, if any, pending in the appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 15.4.2015

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