THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 795 OF 2005

JUDGMENT:

This appeal is filed by the appellant/second respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 10.12.2002 passed by the Chairman, Motor Accidents Claims Tribunal-cum-
II Additional District Judge, Ranga Reddy District, in O.P.No.495 of 1999.

2. The claimant filed the above O.P under Section 166 of the Act, claiming compensation of Rs.1 lakh on account of the injuries sustained by him in a motor vehicle accident.

3. The appellant/insurance company was arrayed as the second respondent, while the first respondent as the petitioner and the second respondent as the first respondent in the O.P. before the Tribunal.

4. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.

5. The brief averments made in the petition are as follows:

On 03/04.05.1999 at about 00.15 hours while the petitioner was proceeding in the auto bearing No.AP10U 1483 from Ek-minar towards Nampally as a passenger and when the said auto reached Yatrika Hotel, the driver of the auto drove the vehicle in a rash and negligent manner and lost control over it, resulting which the auto turned turtle. As such, the petitioner sustained fracture to his right leg and other multiple injuries all over his body. The petitioner was shifted to the Osmania General Hospital, Hyderabad where he was treated as an inpatient. A case was registered in Crime No.62 of 1999 by the police, Nampally against the driver of the said auto. The petitioner has still undergoing treatment for the fracture sustained by him. He was not able to attend his normal duties. He became permanently disabled, so he discontinued his binding works. The doctor also advised him to take bed rest for four months.

It is further stated that the first respondent being the driver-cum-owner and the second respondent being the insurer of the crime vehicle, are jointly and severally liable to pay compensation to the petitioner.

6. The first respondent remained *ex* parte before the Tribunal.

7. The brief averments made in the counter filed by the second respondent before the Tribunal are as follows:

The respondent put the petitioner to prove the manner of accident, age and income of the petitioner as well the injuries sustained by him in the accident. The respondent stated that the petitioner has to prove that the driver of the auto was having valid driving licence at the time of accident and that there was no violation of the conditions of the policy. The respondent finally stated that the compensation claimed by the petitioner is high and excessive, and prayed the Court to dismiss the petition.

8. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner himself was examined as PW1 and got marked Exs.A.1 to A.6. On behalf of the second respondent, the Assistant Divisional Manager of the second respondent company was examined as RW1 and got marked

Ex.B.1.

9. The Tribunal, after considering the oral and documentary evidence, having held that the accident was caused due to rash and negligent driving of the driver of the auto i.e. first respondent, in which the petitioner sustained injuries, awarded compensation of Rs.62,725/- along with 9% interest. The Tribunal also held that the second respondent can recover the said amount of compensation paid by them to the petitioner from the first respondent as he was driving the offending auto in a drunken state by violating the terms and conditions of Ex.B.1 policy.

10. Aggrieved by the order of the Tribunal, the second respondent-insurance company preferred the present appeal.

11. The learned counsel for the appellant/insurance company argued that the amount awarded by the Tribunal is highly excessive and disproportionate to the injuries received by the first respondent/claimant; that the first respondent drove the vehicle in a drunken condition and thereby violated the conditions of the policy; that though the Tribunal mentioned in the judgment that the insurance company can recover the amount of compensation paid by it to the first respondent/claimant from the second respondent/insured, the same was not reflected in the decree of the Tribunal; that the rate of interest awarded by the Tribunal is arbitrary; that the insurance company is not at all liable under any circumstances, and finally, prayed the Court to set aside the order dated 10.12.2002 passed in O.P.No.495 of 1999.

12. On the other hand, the learned counsel for the first respondent/petitioner conceded that the Tribunal held in the judgment that the insurance company can recover the amount of

compensation paid by it to the first respondent/claimant from the second respondent/insured. However, it is argued that the compensation granted by the Tribunal is just and reasonable, which needs no interference by this Court.

13. Having regard to the submissions made by both the learned counsel, the point that arises for consideration is:

> Whether the appellant/insurance company has made out any case to set aside the order dated 10.12.2002 passed by the Tribunal in O.P.No.495 of 1999?

14. **Points**:

A perusal of the evidence of PW1 coupled with Exs.A.1 and A.2 clearly proved that the accident occurred due to rash and negligent driving of the auto, in which the petitioner was travelling and received grievous injuries. The finding of the Tribunal regarding the manner of accident needs no interference.

15. A perusal of the evidence produced by PW1 clearly shows that after the accident, he was admitted in the Osmania General Hospital and stayed there about 14 days as an inpatient. Further, Ex.A.4 shows that the petitioner was admitted in the hospital on 25.06.1999, an operation was conducted on 08.07.1999 and he was discharged on 30.06.1999. By considering the evidence of PW1 coupled with documentary evidence, the Tribunal rightly awarded the compensation of Rs.62,725/- under various heads.

16. The Tribunal, no doubt, observed that the first respondent was driving the vehicle in a rash and negligent manner and he was in a drunken state of mind and due to the said fact, the accident occurred. The main contention of the appellant-insurance company is that though the Tribunal held that the insurance

company can recover the compensation from the first respondent who is the driver-cum-owner of the auto bearing No.AP10U 1483, while preparing the decree, the Tribunal omitted this fact and held that both the respondents have to pay compensation to the petitioner along with 9% interest from the date of the petition till realisation. The learned counsel also contended that since the accident occurred after the amendment of the Act, the insurance company is not liable to pay any compensation in view of the ratio laid down in *National Insurance Company Limited Vs. Baljit Kaur and others*[1].

17. A perusal of the decree shows that it is prepared contra to the judgment by omitting the fact that the insurance company can recover the amount of compensation paid by it to the petitioner, from the first respondent. Therefore, now it is made clear that the insurance company has to pay the entire compensation to the petitioner and recover the same from the second respondent/first respondent by initiating the proceedings before the Executing Court without filing a separate suit.

18. Further, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in *Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad Municipal Transport Service*[2] and *Rebeka Minz and others Vs. Divisional Manager, United India Insurance Company Limited and another*[3], the rate of interest, awarded by the Tribunal, is hereby reduced from 9% p.a. to 7.5% p.a. on the entire compensation amount from the date of petition till the date of realisation.

19. With the aforesaid observation, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in

this appeal shall stand closed.

(ANIS, J)

21.08.2015
Anr

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[1] 2004 (1) SCALE 124

[2] 2013 ACJ 2733

[3] 2012 ACJ 2328