

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.2504 OF 2004

JUDGMENT:

The 2nd respondent-Insurer among the two respondents including owner of the crime bus bearing No. PY 01 B/1491 in O.P.No.457 of 1996 on the file of the learned Chairman of the Motor Accidents Claims Tribunal, Nellore (*for short, 'Tribunal'*), filed under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), by the injured-claimant for the fracture to his left clavicle bone and legs sustained by him in the accident dated 07.07.1995 caused by the crime bus due to rash and negligent driving of its driver, while proceeding on his bicycle, for the claim of Rs.50,000/- (Rupees fifty thousand only), since granted Rs.30,000/- with interest at 12%p.a. fixing joint liability including the Insurer; preferred this appeal impugning the award of the tribunal dated 05.11.2001, with the contentions in the grounds of appeal as well as submissions during the course of hearing that the compensation awarded by the tribunal is excessive and the tribunal failed to find that the driver of the crime bus has no driving license, so there is a breach of condition of policy, hence to set aside the award of the tribunal by allowing the appeal.

2. Whereas, it is the contention of the learned counsel for the claimant, from the claim is dismissed for default against 2nd respondent-owner of the crime bus as per Court order dated 18.03.2004, that the award of the tribunal holds good and requires no interference by this Court while sitting in appeal but for no cross-objections to enhance, hence to dismiss the appeal.

3. Perused the material on record. 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 in the appeal are:

1. *Whether the compensation as well as rate of interest awarded by the tribunal is excessive to reduce and requires interference by this Court while sitting in appeal, if so, what is the just compensation and what observations?*

2. To what result?

Point No.1:

5. There is no dispute as to the manner of the accident but for quantum of compensation and liability of Insurer mainly on the contention that as per Ex.B.2 letter addressed by Insurer to the Insured to produce the driving license of the driver of the crime vehicle and the Insured failed to comply by inferring no license, hence the insurer ought to have been exonerated from liability. In fact, there is no acknowledgment filed much less proved issuance of notice and its service, but for saying Ex.B.2 office copy of notice which is not enough to say notice issued and served apart from that the Insurer did not take any steps to summon the Regional Transport Officer, concerned or to cause issue summons the driver or owner of the vehicle to prove the driving license particulars. Thus, in the absence of which, when the Insurer failed to discharge the burden, the contention of the Insurer that the Insurer cannot be made liable for the alleged non possessing of license by the driver has no legs to stand. Thereby for this Court while sitting in appeal there is nothing to interfere with the reasoned findings of the tribunal including on the quantum. 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.

Date: 10.04.2015

VVR

Dr. B. SIVA SANKARA RAO, J