

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.82 of 2006

JUDGMENT:

The New India Assurance Company Limited, who is respondent No.2 in M.V.O.P.No.669 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Cuddapah (for short, 'the Tribunal'), is the present appellant. Aggrieved by the order dated 09.09.2005, whereby and whereunder, a sum of Rs.1,50,000/- was granted as against the claim of Rs.3,00,000/- laid under Section 163-A read with 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred requesting to set aside or modify the said order.

2. Respondent No.1 herein is the petitioner, while respondent No.1 and the appellant herein, who are the owner and insurer of the jeep bearing registration No.AP 04U 3421 respectively, were the respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 04.09.2003, the petitioner, who was working as Deputy Mandal Revenue Officer of V.N.Palli, was proceeding on his Hero Honda motorcycle bearing registration No.AP 04U 3421, owned by the 1st respondent, driven in a rash and negligent manner at high speed coming on wrong side and dashed his motorcycle, resulting in fracture injuries to him and immediately he was shifted to Government General Hospital, Cuddapah, for treatment and since he required expert treatment, he voluntarily left the hospital on the same day and joined in the hospital of Dr.Subramanya Rao and he underwent surgical intervention to his right leg and took treatment till 14.09.2003. According to him, he spent Rs.45,000/- towards medicines, transport charges, etc. He was on leave for more than six months and he was drawing monthly salary of Rs.11,933/- at the time of accident. Therefore, he sought compensation from respondent Nos.1 and 2, who are the owner and insurer of the jeep respectively.

5. Before the Tribunal, respondent No.1 remained *ex parte*.

6. Respondent No.2 opposed the claim raising various pleas.

7. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr.C.Sanjeevaiah as P.W.2 and marked Exs.A.1 to A.15 and the case sheet as Ex.X.1; whereas, on behalf of the 2nd respondent-Insurance Company, one of its employees from its local branch, by name D.Muneppa was examined as R.W.1 and the R.T.O., K.R.Narasimha Reddy, was examined as R.W.2 and Exs.B.1 and B.2, which are xerox copy of insurance policy and driving licence extract and endorsement, were marked.

8. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioner finding that due to rash and negligent driving of the driver of the jeep, the accident had occurred. On issue No.2, the Tribunal, having found from Ex.A.2-wound certificate and from the evidence of P.W.2-doctor, that the petitioner sustained fracture of both bones of right leg and other three simple injuries, description of which is shown in paragraph No.11 of the order, granted Rs.10,000/- towards pain and suffering, Rs.10,000/- towards extra nourishment, Rs.10,000/- towards cost of prolonged treatment, Rs.70,000/- towards avilment of earned leave and half pay leave for a period of more than six months and Rs.50,000/- towards the fracture injury, and, thus, granted a total sum of Rs.1,50,000/- with interest at 7.5% per annum from the date of petition till realisation.

9. It is the aforesaid order which is under challenge in the instant appeal by the 2nd respondent-Insurance Company mainly contending in the grounds of appeal that the Tribunal was not right in granting an amount of Rs.1,50,000/- as the petitioner sustained only one fracture and the amount awarded under various heads, such as, extra nourishment, pain and suffering and prolonged treatment, without there being any basis. It is also stated that the amount of Rs.70,000/- granted towards avilment of earned leave and half pay leave is without any evidence on record. It is also stated that the Tribunal was not right in granting Rs.50,000/- towards injury while discarding Ex.A.13, and, therefore, sought to set aside the order and decree of the Tribunal.

10. Heard Sri G.S.Prakash Rao, learned Standing Counsel for the appellant-Insurance Company, and Sri D.Kodandarami Reddy, learned counsel for respondent No.1 herein, who is the petitioner-claimant. Despite service of notice, none appears for respondent No.2 herein, who is owner of the jeep.

11. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the parties respectively. The appellant herein-Insurance Company admittedly is not challenging the finding recorded by the Tribunal as to the driving licence possessed by the driver of the jeep at the time of accident, though, before the Tribunal, evidence was also let in to show that the driver only possessed LMV non-transport licence, but he was driving the jeep, which was a transport vehicle. Therefore, that finding of the Tribunal attains finality.

12. The only finding on which the instant appeal is preferred is in regard to quantum of compensation determined by the Tribunal.

13. The learned counsel for the Insurance Company submits that the Tribunal was not right in granting Rs.70,000/- towards avilment of earned leave and half pay leave without there being any evidence, whereas the learned counsel for the 1st respondent-claimant submits that the certificate issued by the Mandal Revenue Officer as regards avilment of leave by the petitioner is exhibited as A.12, and, therefore, it cannot be said that without any evidence on record, the Tribunal has granted Rs.70,000/- towards avilment of earned leave and half pay leave.

14. A perusal of Ex.A.12 would reveal that the petitioner availed earned leave for 90 days from 05.09.2003 to 31.12.2003 and extended it by availing 29 days again from 04.12.2003 to 01.01.2004 and half pay leave for 66 days from 02.01.2004 to 07.03.2014, and, thus, he has availed 185 days or 6 months 5 days. So, in the presence of Ex.A.12, it cannot be said that the Tribunal went wrong in granting Rs.70,000/- since the petitioner was drawing monthly salary of Rs.11,933/-. Therefore, there is no force in that submission of the learned counsel for the Insurance Company.

15. Concerning other amounts granted by the Tribunal, towards extra nourishment, prolonged treatment and pain and suffering, i.e., Rs.10,000/- each, it cannot be said that granting of said amounts was neither excessive nor arbitrary. Concerning Rs.50,000/- granted by the Tribunal towards fracture injury, it cannot also be said

that it is on higher side as the petitioner sustained fracture of right lower leg and certainly, he must have been immobilized for a considerable period due to suffering, more so, when the petitioner was not granted any amount towards attendant and transport charges. Thus, viewed from any angle, the amount of Rs.1,50,000/- granted by the Tribunal is neither excessive nor arbitrary, and, hence, there is absolutely no merit in the appeal.

16. Therefore, the instant appeal is dismissed confirming the order and decree passed by the Tribunal in all respects. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

21st April, 2015

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