

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3809 of 2009

JUDGMENT:

Aggrieved by the Award dated 17.06.2009 in M.V.O.P.No.50 of 2007 passed by the Chairman, M.A.C.T-cum-IV Additional District Judge, (Fast Track Court) Tanuku (for short "the Tribunal"), the 3rd respondent in the O.P/Cholammandalam MS General Insurance Company Limited preferred the instant MACMA.

2 a) On factual side, on 21.08.2006 at about 9.30 p.m, when the claimant was waiting at the centre for bringing medicines for her husband, two persons viz. Mamidisetti Satish (claimant in OP.No.473/2007) and Kayala Ramu came on that side in their motorcycle bearing No.AP 16 AK 5118 and at her request they gave lift to her and while they were proceeding towards ring road near Prattipadu at 10.00 PM, a car bearing No.AP 13 X 1443 being driven by its driver in a rash and negligent manner and dashed the motorcycle. Due to which the petitioner and two others fell down on the road. In the resultant accident, the claimant sustained fracture injuries on her right leg and left ankle. It is averred that the accident was occurred due to the fault of driver of the car. With these averments, the claimant filed M.V.O.P.No.50 of 2007 under Section 166 of Motor Vehicles Act, 1988 against respondents 1 and 2, who are the driver and owner and respondent No.3 who is the insurer of the offending car and claimed Rs.3,50,000/- as compensation.

- b) Respondent Nos.1 and 2 remained *ex parte*.
- c) Respondent No.3/Insurance Company filed counter denying all the material averments made in the petition and urged to put the claimant in strict proof of the same. R3 contended that the owner of the offending car was not having proper road permit, fitness certificate, and registration certificate at the time accident. It is also contended that as the accident occurred on account of collusion between motorcycle and car, driver, owner and insurer of the motorcycle are necessary parties to the claim petition. R3 further contended that as the accident was occurred due to the fault of motorcyclist, R3 is not liable to pay any compensation. Finally, R3 contended that the compensation claimed is highly excessive and thus prayed to dismiss the O.P.
- d) During trial, PWs.1 to 3 were examined and Exs.A1 to A10 were marked on behalf of claimant. Ex.B1—policy copy was marked on behalf of 3rd respondent.
- e) The Tribunal on appreciation of both oral and documentary evidence on record, has awarded total compensation of Rs.2,62,500/- with costs and interest at 7.5% p.a. against respondents 1 to 3.

Hence, the appeal by Insurance Company.

- 3) The parties in this appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri Kota Subba Rao, learned counsel for appellant/ Insurance Company, Sri Kambampati Ramesh Babu, learned counsel for respondent No.1/ claimant; R2/ driver is not necessary vide CT and notice sent to R3/owner was unserved.

5 a) Challenging the award learned counsel for appellant/Insurance Company contended that seating capacity of the motorcycle is only two in all but at the time of accident the rider was having triple riding in contravention of the Section 128 of M.V.Act and thereby the motorcyclist was equally contributed for the accident and hence, the Tribunal instead of fixing his liability as 25% ought to have fixed the same as 50%. Learned counsel thus prayed to fix the liability of motorcyclist accordingly.

b) Secondly, he argued that the Tribunal fixed disability of the claimant on high side as 55%. His argument is that though assuming physical disability as 55%, the functional disability will not be that much since the claimant can be able to attend her works as usual and therefore compensation needs to be re-assessed in this appeal. He thus prayed to allow the appeal.

6) Per contra, learned counsel for first respondent/claimant supported the award in all respects.

7) In the light of arguments, the point for determination in this appeal is:

“Whether the award passed by the Tribunal is factually and

legally sustainable?”

8 a) **POINT**: The first argument of the appellant is that the Tribunal ought to have apportioned liability between the driver of the car and motorcyclist equally in view of the fact that the motorcyclist was having triple riding at the time of accident and he thus contributed equally. It must be said that this argument does not hold much water for the reason that the Tribunal having regard to the fact that the motorcyclist was going along with two pillion riders at the time of accident and relying upon the decision reported in ***United India Insurance Company Limited vs. K. Anjaiah***^[1] rightly fixed his liability as 25%. The appellant/Insurance Company did not examine any witnesses on its behalf to show that more than the fault of having two pillion riders and expressing the discomfort, the motorcyclist committed additional faults like passing on the wrong side or drove in a drunken state etc. to come to a conclusion that his fault was much more than 25%. Therefore, this argument cannot be accepted.

b) So far as second argument is concerned, the evidence of PW2—doctor who treated her and issued disability is important. He deposed that claimant suffered fracture of right femur and suffered with gap and non-union of right femur for which she was operated by him by ORIF and limb lengthening using LRS. He further deposed that he being one of the members of the District Medical Board on examination of claimant he issued Ex.A9—disability certificate certifying she

suffered 5% permanent disability. While speaking the effect of disability he stated that she would be facing difficulty in squatting and climbing up hills and she cannot perform heavy labour works. In the cross-examination he denied the suggestion that she cannot perform heavy labour works and thus she did not suffer disability. It is true that what is spoken by PW2 is only with regard to physical disability of the claimant. However, the appellant/Insurance Company did not produce contra evidence before the Tribunal by making an attempt to get the claimant examined through another medical expert of their choice and letting his evidence in Court. Therefore, there is no challenge to the evidence of PW2. Hence his evidence can be believed. The claimant is a masonry coolie and therefore, her functional disability also can be accepted as 55%. Hence, I find no excessiveness in the compensation awarded by the Tribunal for the disability of the claimant.

9) So, at the outset there are no merits in the appeal and accordingly this MACMA is dismissed by confirming the award passed by the Tribunal in O.P.No.50 of 2007. No costs in the appeal.

As a sequel, miscellaneous petitions if any pending, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 04.02.2015

Murthy

[\[1\]](#) 2004 (1) LS 332