

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.4523 of 2008

ORDER:

The appellant is the 3rd respondent-insurer of O.P.No.443 of 2006 among three respondents including ex-owner and present owner as on the date of accident of the Maruthi Van bearing No.AP 02E 6726. The claim is maintained by the injured claimant for Rs.5,00,000/- under Section 166 of the Motor Vehicles Act for the injuries sustained in the motor accident dated 03.06.2005, saying while he was a pillion rider on the bike being ridden by his friend Ravi Sankar Reddy, from Pulivendla to Thondur, due to the alleged rash and negligent driving of the driver of Maruthi Van supra, while proceeding in opposite direction dashed the bike, as a result of which he sustained injuries.

2. The 3rd respondent-insurer, who is the appellant herein contested the claim while disputing any entitlement to the claim and also on the ground of contribution to the accident by the rider of the bike and the claim solely against Maruthi Van is not sustainable and placed reliance insofar as contribution by the bike rider the expression of the Apex Court in Municipal Corporation of Greater Bombay v. Laxman Iyer (2004(1) IAC 682 (SC)).

3. The trial Court from the evidence on record awarded compensation of Rs.4,82,000/- with interest at 6%p.a. Impugning

the same, the present appeal is maintained with the contentions raised by the insurer that the tribunal gravely erred in awarding such a huge compensation without basis including Rs.1,44,000/- towards pain and sufferance calculated even at Rs.18,000/- for each of the so called injuries though only four in number as if eight in number and even it is more than that what is awarded in ignoring the same apart from awarding Rs.2,01,600/- towards permanent partial disability of 35% from the evidence of PWs 2 and 3 with reference to Ex.A15 is also not sustainable and even granting of medical expenses of Rs.30,000/- with reference to Exs.A7 to A10 bills also not sustainable. It is also the other contention that the vehicle insured is for own purpose whereas used for commercial purpose by hiring the vehicle and driver got only Light Motor Vehicle non-transport which cannot be to use the vehicle for hire purpose and there is violation of terms and permit conditions of policy, which exonerate the insurer, that was not properly considered by the insurer, thereby sought for exoneration otherwise to reduce compensation with pay and recovery directions, if any.

4. Whereas, it is the contention of the learned counsel for the claimant injured-1st respondent that award of the tribunal holds good but for no cross objections, there is nothing to interfere. Hence, to dismiss the appeal.

5. Heard and perused the material on record.

6. Undisputedly, both vehicles were proceeding in opposite direction but for the injured claimant, there is no other eye witness examined. However, the fact remains of Ex.A1-FIR and Ex.A3-chargesheet are against the driver of Maruthi Van. The Motor Vehicles Inspector Report not even filed so also the scene observation report, which are decisive to say any contributory or composite negligence of the bike rider also. There is no doubt, no oath against oath to the evidence of PW.1 from the respondents apart from nothing from cross examination of PW.1 in favour of respondents to say there is composite negligence thereby once that is the conclusion, the tribunal arrived in fixing liability on the Maruthi Van owner and insurer, for this Court while sitting in appeal, there is nothing to interfere much less to fix composite or contributory negligence of the opposite bike rider also to which the claimant is the pillion rider.

7. Coming to the quantum of compensation and rate of interest 6%p.a. awarded by the tribunal itself is low to enhance if at all 7.5% Leave it as it is. Coming to the quantum, no doubt there is no basis for awarding Rs.1,44,000/- for pain and sufferance that too when 35% permanent partial disability taken into consideration from the evidence of PWs.2 and 3 which disclose from the eye vision partial disability mentioned by PW.2 from the eye injury No.4 at 30% whereas from the fracture of both bones of the left leg and from the fracture to the clavical and fracture to the tibia respectively, the post treatment

disability mentioned in Ex.A15 by the evidence of PW.3 doctor at 35% which is partial permanent disability. The tribunal rightly taken as to what is the functional disability from the respective limbs disability disclosed over all to consider in arriving 35%. Thereby there is also nothing in this regard in taking 35% permanent disability so far as that permanent disability calculation concerned. Undisputedly there is no proof regarding he worked or terminated from service after alleged accident to give any credence to Exs.A11 and A12 as rightly concluded by the tribunal. The accident was dated 03.06.2005. Even in the absence of proof regarding his qualification and avocation, as laid down in the expression of the Apex Court in *Lata Wadhwa v. State of Bihar*¹, minimum Rs.3,000/- per month to be taken by the date of accident and hence it can be safely taken Rs.3,400/- p.m. as four years subsequent to the expression. Once such is the case, 35% permanent disability comes to Rs.1190 x 12 x 15 (multiplier from his age between 36 to 40 years and not 16 as taken by the tribunal as per *Sarla Verma v Delhi Transport Corporation*²), then it comes to Rs.2,14,200/- and what the tribunal arrived is Rs.2,01,600/- to be enhanced to Rs.2,14,200/-. However, so far as pain and sufferance concerned for the compound fracture and three other injuries including eye injury from disability separately taken Rs.80,000/- is awarded, Rs.10,000/- towards transport charges, attendant charges, extra

¹ AIR 2001 (SC) 3218

² 2009 ACJ 1298.

nourishment and Rs.1,20,800/- towards medical expenses claimed out of bills produced and incurred mainly Exs.A7 and A8 shows for Rs.1,04,200/- of Sindhus Hospital. Thus, Rs.4,25,000/- is the just compensation however by enhancing rate of interest from 6%to 7.5%

8. Accordingly and in the result, the appeal is partly by reducing the compensation from Rs.4,82,000/- to Rs.4,25,000/- by enhancing the rate of interest from 6%to 7.5%p.a. from the date of claim petition till realization. There is no order as to costs.

9. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B.SIVA SANKARA RAO, J

Date:07-09-2016
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