HONOURABLE SRI JUSTICE S.RAVI KUMAR

M.A.C.M.A.No.23 OF 2014

Dated 1-6-2016

Between:

Bajaj Allianz General Insurance Co., Ltd., represented by the Branch Manager, Airport Road, Yerawada, Pune.

..Appellant.

And:

Vuppuretla Surendra and another.

..Respondents.

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M.A.C.M.A.No.23 OF 2014

JUDGMENT:

This appeal is preferred against the order dated 12th June, 2013 in M.V.O.P.No.106 of 2006 on the file of III Additional District Judge-cum-Motor Accidents Claims Tribunal, Nellore.

First respondent herein filed claim petition under Section 166 of M.V.Act contending that on 14-3-2005, claimant along with two others went to Sangam Mandalam on a motor cycle bearing registration No.A.P-26-DTR-9854 while they were returning to Buchireddypalem, on the way due to sudden focus of head lights of opposite vehicle, their motor cycle went to extreme road side and they fell into bushes and due to the impact, all of them sustained injuries. It is further contended that claimant was shifted to Bollineni Hospital, Nellore and he was treated as impatient, he spent nearly Rs.2,50,000/- towards medical expenses and that he was hale and healthy prior to the accident and he was earning Rs.100/- per day, on account of injuries he is now a disabled person therefore, entitled for a compensation of Rs.4,00,000/-.

Insurance Company i.e., appellant herein disputed the claim of injured and opposed the claim contending that at the time of accident, three persons were riding on the motor cycle which is contrary to the provisions of M.V.Act and accident was done to own fault of the injured, therefore, Insurance Company is not liable to pay any compensation for violation of policy conditions.

On these contentions, claims Tribunal conducted enquiry during which two witnesses are examined and three documents are marked on behalf of claimant and two witnesses are examined and two documents are marked on behalf of Insurance Company and on an oral consideration of oral and documentary evidence, Claims Tribunal discarded the objection of the Insurance Company and granted compensation of Rs.99,000/-. Aggrieved by the award, Insurance Company preferred the present appeal.

Heard both sides.

Advocate for appellant submitted that claimant cannot get any compensation for his own fault and submitted that as per material on record, three persons were on the Motor Cycle at the time of alleged accident and as the accident was due to the own negligence of the claimant himself, Tribunal erred in granting compensation.

On the other hand, advocate for first respondent submitted that the very same objection was negatived by the Tribunal on the basis of evidence available on record, therefore, it is not open to the Insurance Company to raise the very same objection. It is further submitted that lower court has rightly granted compensation and that there are no grounds to interfere.

Now the point that would arise for my consideration in this appeal is whether the order of Tribunal, is legal, correct and proper?

POINT:

As already referred above, two witnesses are examined on behalf of claimant and out of them, P.W.1 is injured himself and P.W.2 is the Medical Officer who treated the injured. As per the evidence of P.W.1, he sustained two grievous injuries in the accident and he deposed as to how accident took place. Though he was cross examined on behalf of Insurance Company, his evidence remained unrebutted with regard to manner of accident and nature of injuries. Medical Officer who treated the injured deposed that on 14-3-2005, he examined the injured and found fracture of left femur and other injuries. He deposed injured was admitted in the hospital on 14-3-2005, and opined that patient has difficulty for his day to day work due to injuries. Considering this evidence and Medical bills, produced on behalf of claimants, Claims Tribunal awarded a sum of Rs.99,000/-. The main objection of Insurance Company is that first respondent herein sustained injuries due to his own negligence but there is absolutely no evidence to support the said contention and Claims Tribunal rightly negatived their objection, as Insurance Company failed to substantiate that the accident was due to the own fault of first respondent herein. In fact, some rulings were cited before the lower tribunal and the tribunal, on a consideration of material evidence, negatived the objection of Insurance Company. I do not find any wrong in the findings of the Claims Tribunal as there is no evidence to support the plea of Insurance Company.

On a scrutiny of material, I am of the view that

Claims Tribunal has rightly granted compensation and that there are no grounds to interfere with the award of the Claims Tribunal. Therefore, appeal is devoid of merits.

Accordingly, this appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE
S.RAVI KUMAR

Dated 1-6-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs