

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1566 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal is preferred by the respondent No.2 – Oriental Insurance Company Limited (for brevity “the insurer”), challenging the order and decree dated 04.05.2006, passed in O.P.No.1635 of 2002 by the Chairman, Motor Accidents Claims Tribunal (VI Additional District Judge – FTC), Kamareddy, Nizamabad District (for brevity “the Tribunal”), whereby and whereunder a sum of Rs.91,900/- was awarded towards compensation, as against the claim of Rs.3,00,000/- laid by respondent No.1 – petitioner, under Section 166 (1)(a) of the Motor Vehicles Act, 1988, r/w. Rule 455 of the Motor Vehicle Rules, 1989, for the injuries sustained by him in a road accident, mainly on the ground that the Tribunal granted a sum of Rs.54,600/- towards loss of earnings, despite Ex.A-4 – Leave Certificate issued by the Mandal Educational Officer, showing that the 1st respondent/petitioner availed commuted leave for 6 days from 10.09.2002 to 15.09.2002 and, therefore, to that extent, sought to modify the order and decree passed by the Tribunal by reducing the amount of compensation, proportionately. The other grounds are not insisted upon by the learned Standing Counsel for the appellant-insurer.

2. Appellant – Oriental Insurance Company Limited is respondent No.2; respondent No.1 is the petitioner; respondent No.2 is the owner of the offending Tractor bearing No.AP 25T 4289 with Tractor No.AP T 4329, and respondent No.3, who is the wife of respondent No.2, is respondent No.3 in O.P.No.1635 of 2002. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.1635 of 2002 before the Tribunal.

3. Heard Sri B. Srinivasu, counsel, representing Sri B. Devanand, learned Standing Counsel for the appellant-insurer; and Sri P. Giri Krishna, learned counsel for the 1st respondent/petitioner. There is an endorsement that the respondent No.3, who was arrayed as wife of the respondent No.2 – owner of the offending Tractor and Tractor, is not a necessary party.

4. Perused the order under challenge and the evidence on record, both oral and documentary, let in by the parties.

5. For grievous injuries sustained by the petitioner in a road accident that took place on 09.09.2002, the petitioner filed the aforesaid petition for awarding Rs.3,00,000/- as compensation. The Tribunal, after analyzing the evidence on record, both, oral and documentary, adduced by both sides, granted a sum of Rs.20,000/- for one grievous injury, Rs.3,000/- towards one simple injury, Rs.54,600/- towards

loss of earnings, Rs.4,300/- towards medical expenses as per the medical bills enclosed by the petitioner; and Rs.10,000/- towards pain and suffering.

6. A perusal of Ex.A-4 – Leave Certificate would show that the Mandal Educational Officer issued the said certificate stating that Sri Syed Lateef, who is the claim petitioner herein, has availed commuted leave from 10.09.2002 to 15.09.2002 i.e., for a period of six (6) days. However, the Tribunal, while computing the temporary loss of earnings, in para-8, records thus:

“..... On account of sustaining fracture injury he could not attend to his duties and therefore he is entitled to six months loss of future earning which comes to Rs.6 x 9,400/- = 56,400/- (Rupees fifty six thousand and four hundred only).....”

7. The petitioner was working as Headmaster in the Government School and earning Rs.9,400/- per month. When Ex.A-4 – Leave Certificate clearly shows that the petitioner availed commuted leave only for six (6) days, certainly, the Tribunal was not right in granting salary for a period of six months @ Rs.9,400/- per month and, instead, it ought to have granted salary only for 6 days i.e., Rs.9,400/- / 30 x 6 = 1,878/-. Thus, the petitioner is entitled to a sum of Rs.1,878/-, which is rounded off to Rs.1,900/-, for availing six days commuted leave, as against the amount of Rs.54,600/- granted by the Tribunal towards loss of earnings for a period of six months.

8. Further, it is to be noted that, while calculating the total amount of compensation, at the end of para-8, in respect of 'Loss of earnings', instead of taking the amount of Rs.56,400/-, the Tribunal has wrongly taken the amount as Rs.54,600/- and, thus, arrived at a total compensation of Rs.91,900/-, which is incorrect. If the exact amount of Rs.56,400/-, as calculated by the Tribunal towards Loss of earnings for six months, is taken into consideration, the total amount of compensation would come to Rs.93,700/-, instead of Rs.91,900/- as arrived by the Tribunal.

9. Accordingly, the Civil Miscellaneous Appeal is allowed in part, reducing the amount of compensation from Rs.91,900/- to Rs.39,200/- (Rupees thirty nine thousand two hundred only). In all other respects, including the rate of interest, the order passed by the Tribunal shall remain unaltered. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

11.08.2016.
Msr

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