

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2371 OF 2009

JUDGMENT:

Heard Sri V. Srinivasa Rao, learned standing counsel for the United India Insurance Company, Miryalaguda, Nalgonda District - appellant herein.

2. No representation for respondent No.1 - petitioner (claimant), though, entered appearance.

3. Despite service of notice, none appears for respondent No.2, owner of the Commando Jeep bearing No.AP-7-W-1739 that involved in the accident.

4. The appellant - insurer, on the grounds that there was violation of terms and conditions of the insurance policy, since driver of the Commando Jeep that involved in the accident was not possessing valid subsisting driving licence at the relevant time; second, the injured himself fell down from the jeep and sustained injuries; third, the tribunal went wrong in assessing the compensation taking partial permanent disability at 80% and thus, granting compensation of Rs.7,30,000/-, which is excessive and exorbitant; and thereby preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988, seeking to modify the decree by setting aside the order under challenge dated 08.02.2008, passed by the learned

Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Guntur in M.V.O.P. No.473 of 2006.

5. The facts leading to occurrence of the accident are not in dispute.

6. The fall from the jeep by the injured petitioner, as contended by the learned counsel for the insurer, does not merit for the reason as no person would fall on his own from a running jeep unless the driver of the jeep was driving it in a rash and negligent manner and at high speed occasioning such an event to take place. The mere ground that inmate of the jeep, who is the injured petitioner, was not holding the handle grips is not a ground to view that the petitioner himself was negligent and fallen from the jeep on account of such alleged negligence.

7. Turning to the driver of the jeep not possessing valid and subsisting driving licence at the relevant time, the submission of the learned standing counsel is that despite notices being issued to the owner of the jeep directing him to answer, he has not turned up to answer the notices and based on that circumstance, it is vehemently contended that driver was not holding valid subsisting driving licence at the time of accident.

8. But, such a presumption cannot be drawn and, in fact, the charge sheet marked as Ex.A-3 would show that driver of the Commandant Jeep was clutched for the offence punishable under

Section 438 IPC, but not for any of the contraventions of the Motor Vehicles Act, 1988. Therefore, the above stand taken by the learned standing counsel is of any use to allow the present appeal.

9. Turning to the quantum of compensation granted by the tribunal, admittedly, the petitioner sustained amputation above the knee level and below thigh level as could be seen and established from the evidence of PW.3 and the contents of Exs.A-4 to A-8, A-11 and A-4. Therefore, the tribunal viewing the disability at 80% and taking the income of the petitioner at Rs.8,000/- per month in view of the evidence of PW.2, who was Manager in K.C.P. Cements Limited, proving the salary drawn by the petitioner as Rs.8,835/- and, thus, even the tribunal did not go wrong in accepting the salary of the petitioner at Rs.8,000/- per month and the partial permanent disability at 80%, which the petitioner has to face through out his life without one of the main limbs. In fact, the learned standing counsel for the insurer would fairly concede that the tribunal went wrong in applying multiplier '12' as the petitioner was 8 years old on the date of accident and that the relevant multiplier for his age group is '15'.

10. Thus, viewed from any angle, there is no merit at all in the appeal.

11. Therefore, the Civil Miscellaneous Appeal is dismissed.
No order as to costs.

As a sequel thereto, Miscellaneous Applications, if any,
pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

December 27, 2016.
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