HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.415 of 2010

JUDGMENT:

The 2nd respondent-insurer among two respondents including owner of the lorry bearing No.AP 16 TW 5658, impugning the award of the tribunal dated 27.11.2009 in O.P.No.84 of 2008 awarding compensation of Rs.1,90,426/- with interest at 7.5% p.a. with the liability of pay and recovery, maintained the appeal with the contentions in the grounds of appeal that the tribunal gravely erred in not considering the fact that the compensation awarded is excessive and beyond what is paid for and should have been seen instead of ordering pay and recovery by total exoneration for the driver has no valid driving license, hence to allow the appeal setting aside fixing of liability of exonerating the insurer otherwise to reduce the compensation.

2. The learned counsel for the appellant reiterated the same.

3. Whereas, it is the submission of the claimant that the award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere but for no cross objections to enhance the appeal.

4. The claim is filed under Section 166 of the Motor Vehicles Act, for a compensation of Rs.2,50,000/- by the injured claimant. The manner of accident pleaded is that on 20.11.2007 at about 4.00 p.m. while the petitioner along with pillion rider-Srinivas Reddy were proceeding on the motor cycle of him bearing No.AP 16C 1711 from Dosapadu, when reached near Vasram Thanda outskirts, due to rash and negligent driving of the driver of the crime lorry of the 1st respondent insured with the 2nd respondent, the lorry dashed the motor cycle, from which he fell down along with pillion rider and sustained grievous injuries and shifted to Kamineni Hospitals and police registered crime No.187 of 2007 and he suffered fracture to left femur besides other multiple injuries and incurred huge amount. It is from the contest of the respondents putting the petitioner to strict proof and by saying it is the contribution of the rider of the bike in which the injured along with Srinivas Reddy were proceeding but not total liability of them for no fault of the driver of the lorry of the 1st respondent and the claim is excessive and untenable. The tribunal having held that the claim as if filed under Section 163-A of the Motor Vehicles Act and no plea and proof is required of negligence on the part of the diver of the crime lorry even but for vehicle in use and the F.I.R and charge sheet established the collision between the two vehicles, resulting the accident of vehicles in use and PW.1 in the cross

examination denied the suggestion of the accident was the result of his sheer negligence in riding the bike and there is no oath against oath in holding the entitlement of compensation from the vehicle insurer for the claim.

5. Now coming to the quantum there from, the tribunal observed that Ex.A6-discharge summary of Kamineni Hospitals and Ex.A7-O.P. Card of the hospital with reference to Ex.A4-case record show petitioner sustained lacerated wound over left knee joint and there is a fracture to the left femur and Ex.A11 is the medical board certificate showing 50% disability to the fracture of left knee. No doubt, same is not proved by examination of any doctor to rely that too when Exs.A4 to A7 are necessary proof from the discharge summary any disability in awarding compensation otherwise for Rs.1,90,426/-. The same is now impugned in the appeal maintained by the insurer.

6. Now, coming to the main contention of quantum is excessive or not concerned, as per Exs.A8 and A9-discharge bill of the Kamineni Hospitals also proved through PW.2 the final bill is for Rs.95,826/- and record shows from the evidence of PW.2 also of petitioner was in-patient in the Kamineni Hospitals from 20.11.2007 to 04.12.2007. The tribunal further taken even PW.2 didn't depose regarding the other bills shown for Rs.73000/- by including to a total sum of Rs.1,70,426/-. In fact, once there is a final bill for Rs.95,826/-as contended by the learned counsel for

the appellant-insurer, other sums covered by Kamineni Hospitals bills cannot be given weight as final bill includes everything. Thus, the medical expenses from the final bill total amount to be taken is only Rs.96,000/- apart from Rs.1600/- another bill, at best to round to Rs.97,500/-. Though Ex.A11-Disability certificate issued by the Medical Board is filed, any Doctor of the Medical Board was not examined to prove the same. Hence, there is nothing to show even from the disability certificate, as rightly observed by the tribunal that the same was issued for medico-legal purpose. The evidence on record shows there is a grievous injury to the knee joint and also fracture to the femur. Once there are two grievous injuries, minimum Rs.40,000/- towards pain and sufferance besides the medical bills of Rs.97,500/-, loss of earnings for two months minimum Rs.7,000/-, attendant charges minimum Rs.5,000/-, transport charges and extra nourishment Rs.2,000/-, in total comes to Rs.1,51,500/- rounded to Rs.1,52,000/- is the just compensation to reduce from Rs.1,90,426/-.

7. Now coming to the liability of the insurer to the extent of pay and recovery awarded by the tribunal and its correctness concerned, Ex.B1 is the driving license even from the evidence of RWs.1 and 2, what is claimed is no valid driving license and it is the submission from Ex.B1 that it is only light motor vehicle. In fact, once there is a driving license and once policy covers the

risk from the settled law of National Insurance Company Limited v. Swaran Singh[1] reiterated in subsequent expressions in Kusum Lata v. Satbir[2] and S.Iyyappan v. United India Insurance Company[3], it is a fit case to order pay and recovery and not for exoneration, thereby there is nothing to find fault of pay and recovery liability but for to elaborate pay and recovery directions.

8. Accordingly, the appeal is partly allowed by reducing the compensation from Rs.1,90,426/- to Rs.1,52,000/- and subject to pay and recovery by the insurer from the owner for imperfect driving license, with the following directions:

The insurer shall deposit said amount within one month from the date of receipt of a copy of this order, failing which the claimant can execute and recover. It is made clear from the settled expressions of the Apex Court in United India Insurance Co. Ltd. V. Lehru[4] and *Oriental Insurance Company Limited Vs. Nanjappan & Others*[5] that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amounts so far to deposit the balance amount to approach the tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for

[1] (2004) 3 SCC 297=2004-ACJ-1
[2] AIR 2011 SC 1234
[3] (2013) 7 SCC 62
[4] JT-2003(2) SC 595 = 2003 ACJ 611
[5] (2004) 13 SCC 224=2004-SAR(civil)-290

execution and recovery in the same proceedings or under revenue recovery as per the Motor Vehicles Act, 1988, and also ask the tribunal not to disburse the deposited amount of the respective claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the tribunal shall not withhold the amounts of the claimant, if there is any necessity to permit for any withdrawals but for to invest the respective balance amounts separately in fixed deposits in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:24.11.2016
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