

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2081 OF 2009

JUDGMENT:

The New India Assurance Company Limited, represented by its Divisional Manager, Secunderabad, who is respondent No.2 in M.V.O.P. No.337 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad (for short, 'the Tribunal'), aggrieved over the order and decree dated 11.01.2007 awarding compensation of Rs.2,00,000/-, as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by respondent No.1 herein in a road accident, preferred the instant appeal under Section 173 of the Act, mainly on two grounds. The first is, that the Tribunal has not properly appreciated the evidence on record and did not take into account the contributory negligence of the driver of the two-wheeler, which the petitioner was riding pillion. The second is that the amount of compensation awarded was excessive and arbitrary. Therefore, sought to modify the order and decree under challenge.

2. The appellant herein, who is the insurer of the accident vehicle, is respondent No.2, while respondent No.1 herein is the petitioner, and respondent No.2 herein, who is the owner of the accident vehicle, is respondent No.1 in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. Heard Smt. Kalpana Ekbote, learned Standing Counsel for the appellant-Insurance Company. Despite service on respondent Nos.1 and 2, who are claimant and owner of the accident vehicle, none appears for either of them.

5. The fact-situation occurring in the instant case is not in dispute. Only in regard to the quantum of compensation and in regard to contributory negligence, the Insurance Company is contesting the case.

6. Learned Standing Counsel for the appellant-Insurance Company would submit that the Tribunal ought to have taken into consideration the contributory negligence pleaded by the Insurance Company, but nothing was discussed in the order passed by the Tribunal. The further submission is that the Tribunal, without there being legally acceptable evidence to prove the medical bills under Ex.A.8, still, granted Rs.75,000/- towards medical expenses and, though, the evidence of P.W.2-medical officer, who assessed the degree of disability is not credible, still, a sum of Rs.50,000/- was granted towards permanent disability and, therefore, sought to modify the order and decree.

7. Perused the evidence on record and the order under challenge. At the outset, it is to be stated that the Tribunal while accepting the permanent disability at 35%, assessed by P.W.2 under Ex.A.7-disability certificate, somehow, has not resorted to any structural formula, but granted a lump sum amount of Rs.50,000/-. Even if the structural formula is applied, the petitioner, being 25 years old and working as a Sales In-charge in Modern Foods Company Limited at Hyderabad, certainly, would get compensation either nearer or lesser than the amount of Rs.50,000/- granted by the Tribunal. Therefore, the same is maintained.

8. So far as the amount of Rs.75,000/- granted by the Tribunal towards treatment in Kamineni Hospital and other incidental charges is concerned, in fact, Ex.A.8 would show that the amount works out to Rs.1,01,462/-. Since the hospital is a reputed one, non-examination of any personnel from the administration side would not amount to any infirmity and to suspect Ex.A.8-medical bills, more particularly, when looked at the injuries sustained by the petitioner, as he sustained as many as three compound fractures, indicating that he would have been treated in the said hospital as an inpatient for a considerable period. Even the medical record would show that he was initially admitted in the said hospital on 07.09.2004 and discharged on 14.09.2004 during the first spell, and again, he was admitted on 03.03.2005 and discharged on the same day after removal of external fixator and again he was admitted on 09.09.2005, in view of non-

union of right tibia and undergone surgical intervention on 10.09.2005 and was discharged on 12.09.2005, and discharge summaries Exs.A.4 to A.6 reflect the same. Therefore, the amount of Rs.75,000/- granted by the Tribunal towards medical expenses is maintained.

9. So far as the amount of Rs.75,000/- granted by the Tribunal towards pain and suffering is concerned, though, it appears to be on higher side, but the fact that the Tribunal has ignored the amount under other heads, they being towards extra nourishment, transport charges, attendant charges and loss of temporary earnings. Hence, the said amount of Rs.75,000/- granted by the Tribunal is also to be maintained.

10. So far as the ground of contributory negligence raised by the Insurance Company is concerned, when a finding is recorded by the Tribunal, unless the said finding is shown as perverse, it does not warrant interference by the appellate court. Therefore, there is no merit in that ground.

11. So far as the rate of interest awarded by the Tribunal at 7.5% per annum, it is also in accordance with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹. Hence, there is no merit in the instant appeal.

¹ 2013 ACJ 1403

12. Accordingly, the instant appeal is dismissed confirming the order under challenge passed by the Tribunal in all respects. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous petitions, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

21st September, 2016

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