

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1977 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by respondent No.3 – New India Assurance Company Limited, aggrieved by the order and decree dated 12.10.2006, passed in O.P.No.803 of 2002 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (FTC), Adilabad District (for brevity "the Tribunal"), questioning the finding recorded by the Tribunal fastening liability on it and also the quantum of compensation determined at Rs.58,000/-, as against the claim of Rs.1,50,000/- made by the 1st respondent – petitioner for the injuries sustained by him in a motor accident that occurred on 29.04.2000.

2. The appellant herein is respondent No.3, respondent No.1 herein is the claim petitioner, respondent No.2 herein, who is the driver of the offending Jeep bearing No.MH 29B 1639 is respondent No.1, and respondent No.3 herein, who is the owner of the said Jeep, is respondent No.2, in O.P.No.803 of 2002. For the sake of convenience, the parties are referred to as they were arrayed in O.P.No.803 of 2002 before the Tribunal.

3. Heard Sri Kota Subba Rao, learned Standing Counsel for the appellant – insurer, and Sri S. Ganesh Rao, learned counsel for respondent No.1 – claim petitioner. Though, notice is served on respondent No.3 – owner, none appears for him. The 2nd respondent – driver, though, not served and remained exparte, his absence is of any consequence.

4. Perused the order under challenge and evidence on record, both, oral and documentary.

5. The fact-situation occurring in the instant case is not disputed by the learned Standing Counsel for the appellant – insurer, except to the extent that the offending vehicle was planted, still, the learned Standing Counsel would contend that in view of Ex.A.3 – Certified copy of the judgment, wherein the driver of the offending jeep admitted his guilt before the learned Magistrate and suffered sentence of imprisonment, the finding recorded by the Criminal Court cannot be erased.

6. As regards the quantum of compensation awarded by the Tribunal, the learned Standing Counsel would submit that the Tribunal, despite considering Ex.A.10 - Disability Certificate, showing the disability sustained by the petitioner at 10%, and having granted a sum of Rs.10,000/- towards loss of future earning capacity, was not right in again granting Rs.30,000/- @ Rs.10,000/- for each fracture

sustained by the petitioner to his 2nd, 3rd and 4th metacarpal bones.

7. There is force in the submission of the learned Standing Counsel for the appellant – insurer. Having accepted the percentage of disability sustained by the petitioner at 10%, the Tribunal ought not to have again granted a sum of Rs.10,000/- for the injury, except granting amount towards pain and suffering. Therefore, the amount of Rs.10,000/- granted by the Tribunal towards 10% disability is improper and hence, the compensation is reduced from Rs.58,000/- to Rs.48,000/-, while maintaining the order under challenge in all other respects and aspects.

8. Accordingly, the Civil Miscellaneous Appeal is allowed in part, and the order and decree dated 12.10.2006, passed in O.P.No.803 of 2002, is modified reducing the compensation from Rs.58,000/- to Rs.48,000/-, while maintaining the same in all other respects and aspects. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

16.09.2016.
Msr

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1977 of 2009



16.09.2016
Msr