

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2299 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the respondent No.3 – United India Insurance Company Limited (for brevity “the insurer”), aggrieved by the order and decree dated 15.04.2005 passed in M.A.T.O.P.No.265 of 2001 by the IV Additional District Judge (FTC-III)-cum-Motor Accidents Claims Tribunal, Khammam (for brevity “the Tribunal”), whereby and whereunder, a total compensation of Rs.1,28,000/- was awarded towards general and special damages for the injury/injuries sustained by the 1st respondent – claim petitioner with interest at 9% per annum from the date of petition till the date of realization, as against the claim of Rs.2,50,000/- laid under Section 166 r/w. Section 140 of the Motor Vehicles Act, 1988.

2. The facts situation as to the manner in which the accident had occurred is not disputed by the contesting parties. Hence, the same need not be gone into again.

3. Heard Sri E. Venugopal Reddy, learned Standing Counsel for the appellant – insurer, as well as Sri M. Rajamalla Reddy, learned counsel for respondent No.1 – claim petitioner, and Sri A. Dattanand, learned counsel for respondent No.3 – owner of the offending car.

4. Learned Standing Counsel for the appellant – insurer would submit that the Tribunal went wrong in ignoring the violation of the 2nd respondent – driver of the offending car in not possessing valid driving licence to drive the passenger vehicle. He would

further submit that though, R.W.1 – one of the Officers of the local Branch of the Insurance Company, in his chief-examination affidavit, has referred to about three documents, while in the witness box, the Court has admitted only Ex.B.1 – copy of insurance policy and, therefore, this Court may take into consideration the other two documents to decide the challenge made in the instant appeal.

5. The learned Standing Counsel would further submit that though, the Medical Officer was not examined and despite the fact that Ex.A.4 – certified copy of Medical Certificate dated 28.06.2000 issued by the Government Hospital, where the 1st respondent – claim petitioner was treated immediately after taking place of the accident, discloses that the 1st respondent – claim petitioner sustained only fracture of tibia, the Tribunal went wrong in holding that the claim petitioner sustained multiple fractures of tibia and fibula, basing on Ex.A.5 – prescriptions. Thus, the Tribunal was not right in treating the injury sustained by the claim petitioner as grievous injury and determining the compensation basing on it.

6. The learned Standing Counsel would further submit that the Tribunal ought to have awarded interest at a lesser rate, instead of awarding at 9% per annum, in view of the authoritative pronouncements of the Hon'ble Supreme Court.

7. On the other hand, learned counsel for the 1st respondent – claim petitioner would submit that the Tribunal has not committed any mistake in determining the amount of compensation and, in fact, the relevant witnesses were not examined to prove the violation asserted by the appellant – insurer. According to him,

though the Medical Officer was not examined, the finding recorded by the Tribunal cannot be interfered with, as the same is based on appraisal of evidence.

8. Perused the order under challenge and also the evidence on record.

9. The first submission made by the learned Standing Counsel for the appellant – insurer, certainly, cannot be countenanced for the reason that nothing prevented R.W.1 to mark the licence and other document as Exs.B2 and B.3, but mere describing the said documents in the chief-examination affidavit is not sufficient to treat them as having been received and, therefore, now the said documents cannot be accepted and acted upon. This apart, even no witness was summoned from the Department concerned in order to prove that the 2nd respondent – driver of the offending car did not hold a valid driving licence, at the relevant point of time, and hence the said submission stands rejected.

10. Coming to the second submission made by the learned Standing Counsel for the appellant – insurer, it is true that in Ex.A.4 – Certified copy of Medical Certificate issued by the Government Hospital, it was recorded that the claim petitioner sustained fracture to tibia and there is no reference of any fracture being caused to the fibula. But, strangely, Ex.A.5 – Prescriptions issued by a Private Nursing Home describes that the claim petitioner sustained multiple fractures to tibia and fibula, which, of course, cannot be considered, for the reason that the doctor concerned is not examined to prove the same. In fact, the Tribunal was obligated with the duty to reconcile the said entries, which it did not do so. Therefore, it can be inferred that the claim petitioner

has sustained only one grievous injury. Since none were examined to prove the expenses said to have incurred by the claim petitioner, the amount of Rs.55,725/- mentioned by the Tribunal under Ex.A.6 alone ought to have granted, but the Tribunal has valued the medical and other expenses at Rs.70,000/- without properly evaluating the other bills and, therefore, the amount of Rs.70,000/- granted by the Tribunal is reduced to Rs.55,725/-. The Tribunal granted a sum of Rs.12,000/- towards extra-nourishment, attendant charges and travelling expenses, which need not be disturbed. Though the Tribunal granted a sum of Rs.6,000/- towards pain and suffering and mental agony, the same, certainly, projects that it has not properly appreciated the whole case in proper perspective. Therefore, the same is reduced to Rs.5,000/-. Thus, the compensation of Rs.1,28,000/- awarded by the Tribunal is reduced to Rs.1,12,725/-.

11. So far as the rate of interest awarded by the Tribunal at 9% per annum is concerned, the same is reduced to 7.5% per annum, in view of the decision in RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS^[1].

12. Accordingly, the Civil Miscellaneous Appeal is allowed in part, reducing the amount awarded by the Tribunal from Rs.1,28,000/- to Rs.1,12,725/- (Rupees one lakh twelve thousand seven hundred and twenty five only) towards general and special damages with interest at 7.5% per annum from the date of petition till realisation. In all other respects and aspects, the order of the Tribunal shall remain unaltered. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

27.06.2016.

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