

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.165 of 2010

JUDGMENT:

The injured claimant maintained the appeal impugning the compensation awarded is utterly low and for exoneration of Insurer from liability. He maintained the claim in O.P.No.107 of 2007 under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act'), on the file of the Special Judge for trial of offences under SCs & STs(POA) Act (FAC) VI Additional District (FTC), Gooty, for compensation of Rs.1,50,000/- against the respondents 1 and 2, owner-cum-driver and Insurer respectively of the auto bearing No.AP 02 W 0461, for the injuries sustained by him in the accident dated 01.03.2006. On contest by the 2nd respondent-Insurer, for the 1st respondent-owner remained exparte, the tribunal by its award dated 02.01.2007 granted, Rs.73,000/- with interest at 7.5% p.a. fixing liability only against the owner-1st respondent.

2. The contention in the grounds of appeal vis-à-vis the oral of the counsel for the appellant during the course of hearing are that the tribunal gravely erred in not considering huge amount incurred for nearly Rs.1,50,000/- by the claimant who sustained injuries to left cheek, left shoulder, left knee joint and right elbow and fracture of the left wrist and what the tribunal awarded of Rs.73,000/- is utterly low and hence to allow the appeal by granting as prayed for.

3. Whereas, the 2nd respondent-Insurer, from the 1st respondent did not choose to contest, submits that the award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere.

4. Heard and perused the material on record.

5. During the course of hearing, it is brought to the notice of the Court by the Insurer that there is no driving license to the owner –cum- Insurer and even for the Ex.B.3 legal notice issued to produce the driving license acknowledged by R.1-owner-cum-driver, he did not produce any license and the column No.17 of MMI report Ex.B.5 also clearly speaks of no driving license produced, shows there is no driving license. From this no doubt to safeguard the interest of the third party claim, even there is no driving license basically insurer cannot be exonerated but for left open to the Insurer to pay and recover from the owner by filing execution petition where if the owner could show that there is driving license that is end of the matter, else the owner to be made liable to compensate the Insurer. However that is not the only reason to exonerate the Insurer totally as besides this, at the time of accident there are 10 persons travelling in the auto against the capacity of 1+3 including driver-cum-owner that is also one of the violations of the policy and permit and in this regard there is a clear suggestion also to P.W.1 by the Insurer. Having regard to the above, the exoneration of the Insurer from liability passed by the tribunal no way requires interference by this Court while sitting in appeal, but for to decide the quantum against the owner awarded is just or not.

6. Now coming to the quantum of compensation, the Ex.A.3 is the wound certificate showing the petitioner sustained 5 injuries of which 4 are abrasions, simple in nature and one is a fracture to the left wrist. P.W.2 is Civil Surgeon, Government General hospital, Anantapur, who deposed that the claimant has malunited left Callus fracture with restriction of movements to the fingers of left hand and issued disability certificate Ex.A.4. What the P.W.2 deposed is there is some partial disability saying there is restriction of movements of left hand which

disallows him to lift heavy weights. No doubt, it is observed by the tribunal that the same is not disputed in the cross-examination of P.W.2 on the partial disability deposed by the P.W.2 and his evidence also no way indicates the disability effects source of avocation and earnings of P.W.1 therefrom the tribunal awarded lumpsum of Rs.50,000/- towards disability and the same needs no interference. Coming to the compensation under other heads, what the tribunal awarded as Rs.23,000/- is utterly low to enhance. For the fracture at least Rs.20,000/- separately, including pain and sufferance instead of Rs.15,000/- what was awarded by the tribunal and for the other four simple injuries Rs.8,000/-, for the loss of earnings Rs.7,000/- and Rs.15,000/- towards medical expenses and treatment including extra nourishment, attendant and transport charges in all Rs.1,00,000/- and the same is just to enhance from Rs.73,000/- awarded by the tribunal.

7. In the result, the appeal is allowed in part by enhancing the compensation of Rs.73,000/- awarded by the tribunal to Rs.1,00,000/- confirming the rate of interest at 7.5% p.a. from the date of petition till realization. Rest of the award of the tribunal holds good. There is no order. Consequently, miscellaneous petitions, if any pending, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date: 14.02.2017.
Vvr.