

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 57 OF 2008

JUDGMENT:

This appeal is filed by the appellant/New India Assurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the judgment and decree dated 13.08.2007, passed by the VII Additional Metropolitan Sessions Judge –cum- XXI Additional Chief Judge at Hyderabad, in O.P.No. 2297 of 2005, awarding compensation of Rs. 1,00,000/-.

2. The claimant filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.3,00,000/- on account of injuries sustained in a motor vehicle accident.

3. The brief averments made in the petition are that on 12.09.2005 at about 7.20 pm the petitioner was proceeding on his Bajaj Chetak Scooter bearing No. AP 9AA 4392 from Charminar side and when he reached near Madina Hotel, one RTC hired bus belonging to first respondent came in an opposite side at high speed and in a rash and negligent manner, hit the petitioner and due to which, he fell down and back right side wheel ran over his left leg and he sustained fracture injuries and was shifted to Osmania General Hospital for treatment, where he was inpatient from 12.9.2005 to 20.9.2005. Subsequently, he took treatment in a private

hospital and he is unable to walk or squat on the ground and his left leg movements are completely restricted and he sustained permanent disability and sought compensation of Rs. 3,00,000/-.

4. 1st respondent set *ex-parte*. The second respondent filed counter denying all the allegations in the petition and claims that if additional premium was paid and risk was covered under the policy, they are liable to pay the amount and in the instant case no additional premium was paid and risk was not covered under the policy, therefore sought for dismissal of petition. The third respondent-APSRTC filed separate counter denying all the material allegations in the petition.

5. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim of claimant, PWs 1 to 3 were examined and got marked Exs.A.1 to A.16. On behalf of second respondent, RW-1 was examined and got marked Ex.B.2 Policy.

6. Basing on the evidence on record, the Tribunal awarded a sum of Rs. 50,000/- towards injury sustained by the petitioner to left foot and for amputation of two toes of left leg, a sum of Rs. 35,000/- was awarded under Ex.P1 discharge bill and further a sum of Rs. 15,000/- was awarded towards pain and suffering, totalling to Rs. 1,00,000/- along with interest at 7.5% per annum from

the date of petition till the date of realisation payable by respondents 1 to 3 jointly and severally.

7. Aggrieved by the judgment and decree, the insurance company preferred the present appeal.

8. The learned counsel appearing for appellant argued that in view of the judgment of the Supreme Court reported in **Managing Director, KSRTC v. New India Assurance Co. Limited and another**¹, the owner is entitled to recover the amount paid to the claimant, the relevant portion reads as under:

“34. In view of the aforesaid discussion, we hold that registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and the KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer.”

9. On the other hand, learned counsel appearing for claimants also conceded to the judgment passed by the Hon'ble Supreme Court in **Managing Director, KSRTC v. New India Assurance Co. Limited and another** (supra).

¹ 2015 (6) ALD 166 (SC)

10. Having regard to the submissions made by learned counsel appearing for appellant, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant Insurance Company is entitled to recover the amount from the owner in pursuance of the agreement?

11. **Points:**

A perusal of the record shows that the Tribunal rightly awarded the compensation of Rs. 1,00,000/- along with interest at 7.5% to the claimant against respondents who are owner and insurer. It is settled law that in view of the judgment of the Supreme Court in **Managing Director, KSRTC v. New India Assurance Co. Limited and another** (supra), the Corporation in terms of lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimant from the owner as stipulated in the agreement or from the insurer.

12. Following the judgment of the Supreme Court in **Managing Director, KSRTC v. New India Assurance Co. Limited and another** (supra), the registered owner, insurer as well as RTC would be liable to pay compensation jointly and severally to the claimant and the RTC in terms of the

lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimant from the owner as stipulated in the agreement or from the insurer.

13. With the above observation, the MACMA is disposed of. There shall be no order as to costs. Miscellaneous Petitions, pending if any, shall stand closed.

ANIS, J

Date: 03.01.2017
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