THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No.1172 of 2010

JUDGMENT:

This appeal is arising out of Order and Decree dated 25.03.2010 in M.V.O.P. No.845 of 2008 on the file of the Motor Accident Claims Tribunal-cum-Family Court–cum-Additional District & Sessions Judge, Anantapur, awarding compensation of Rs.1,00,000/- with interest at 7.5% per annum in the claim petition filed by the claimant - 1st respondent under Sections 140 and 166 of the Motor Vehicles Act (for short 'MV Act'), claiming compensation of Rs.2,00,000/-.

The appellant is IFFCO-TOKIO General Insurance Company Limited, who is 2nd respondent in the OP. The brief facts of the case are that the claimant Golla Guntekari Sivanna @ Golla Sivanna has filed OP No.845 of 2008 against the 2nd respondent and the appellant claiming compensation of Rs.2,00,000/- for the injuries sustained by him in a Motor Vehicle Accident that occurred on 18.08.2008. On the fateful day, at about 4.00 p.m., while the claimant - 1st respondent was talking with Hamalies by standing on the margin of Kalyandurg-Brahmasamudram road, one auto bearing temporary registration No.AP-02-YY-TR-6353 belonging to the 2nd respondent and insured with the appellant, driven by its driver in a rash and negligent manner, dashed against the claimant, due to which the claimant sustained fractures over his right knee and left forearm, in addition to other injuries. Immediately, he was shifted to the Government General Hospital, Kalyandurg, and from there to Anantapur Orthopedic Centre, Anantapur for treatment. The Police, Kalyandurg registered a case in Crime No.108 of 2008 for the offence under Section 337 IPC against driver of the Auto.

The owner of the vehicle i.e. the 2nd respondent herein has remained *ex parte* before the Tribunal. The appellant – Insurance Company filed counter denying the rash and negligent act on the part of the deriver of the auto and attributed negligence to the claimant for the accident.

The Tribunal, on consideration of the evidence of PWs.1 to 3 and RW.1 and also Exs.A1 to A9, and B-1 to B3, awarded compensation of Rs.1,00,000/- for the injuries sustained by the claimant. Aggrieved by the quantum of compensation and also challenging its liability, the insurance company preferred this appeal.

Heard arguments of both sides and perused the material on record.

The point for consideration in this appeal is – *Whether the Insurer - appellant is liable to pay compensation*?

Learned counsel for the appellant - insurance company submitted that the appellant is not disputing the findings of the Tribunal with regard to rash and negligent act on the part of the driver of the auto. It is submitted that the appellant has raised a plea to the effect that the liability of the 1st respondent would be indemnified subject to the terms and conditions of the policy. It is further submitted that the offending vehicle was not having any permit and fitness certificate, and the driver of the vehicle was not having valid driving licence at the time of accident and therefore, the mandatory rules of the Motor vehicle act are not complied with and as such, the Insurer is not liable to pay compensation. It is also contended that the compensation awarded by the Tribunal is excessive.

The contentions raised by the appellant are two fold. Firstly, it is contended that the driver of the vehicle was having temporary licence to drive the vehicle at the time of accident and there is no permit to ply the vehicle on the road and therefore, there is violation of terms and conditions of the policy and as such, the insurer is not liable to pay compensation. The appellant examined its Legal Officer as RW-1 and got marked Exs.B1 to B3 through him, which are the copies of insurance policy relating to the offending vehicle and the unserved hand over summons and also the investigator's report. Learned counsel for the appellant submitted that these documents would clinchingly prove that the burden of the insurer is discharged and inspite of discharging the burden of the insurer, the Tribunal has held that the insurer is liable to pay compensation by holding that the documents Exs.B2 and B3 are not sufficient to prove that they have discharged their burden. He further submitted that the insurer has taken all possible steps for securing particulars of driving licence from the owner of the vehicle by sending summons to him, but the owner of the vehicle has refused to receive the same. Therefore adverse inference has to be drawn in this case.

The contentions raised by the learned counsel for the appellant are with regard to discharge of the burden on behalf of the insurer. The Tribunal has considered all these aspects and came to the conclusion that Exs.B2 and B3 are not sufficient to come to the conclusion that the insurer has discharged its burden. As a matter of fact, the accident occurred out of use of motor vehicle in a public place. There is coverage of insurance policy for the risk of the persons involved in the accident. The only contention of the appellant is that there are violations in the terms and conditions of the insurance policy. As per

Section 149 of the MV Act, it is duty of the Insurer to satisfy judgments and awards against persons insured in respect of third party risks.

The petitioner is the third party to the insurance policy. In view of the facts and circumstances of the case and also in view of the findings of the Tribunal, it would be appropriate to order pay and recovery in this case. Therefore, the insurer shall pay the compensation to the claimant at the first instance and recover the same by following the guidelines given in the case National Insurance Co. Ltd. v. Chella Bharathamma and others[1].

Learned counsel for the appellant contended that the quantum of compensation awarded by the Tribunal is excessive. It is contended that the Tribunal having held that Ex.A4 and A9 cannot be relied upon, awarded Rs.50,000/- towards medical expenses and extra nourishment and transportation and other expenses. It is further submitted that the Tribunal has given a clear finding to the effect that as per the calculation memo affixed to Ex.A-4 medical bills, an amount of Rs.18,772/- only was spent towards medical expenses, but awarded Rs.50,000/- without there being any material on record. In view of the submissions of the learned counsel for the appellant, it would be appropriate to confine the amount of Rs.50,000/- to the amount under calculation memo affixed to Ex.A-4 filed before the Tribunal i.e. Rs.18,772/-. Therefore, awarding of compensation of Rs.50,000/- by the Tribunal under various heads including medical expenses is reduced to Rs.18,772/- as per the calculation memo filed before the Tribunal.

In the result, the appeal is partly allowed by reducing the compensation amount of Rs.1,00,000/- awarded by the Tribunal to

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[1] AIR 2004 SC 4882

Rs.68,770/- with interest at 7.5 % per annum. The rest of the award of the Tribunal shall be intact. No order as to costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

April 21, 2017
KTL