

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

MACMA No.81 of 2010

JUDGMENT:

This appeal is filed by the insurance company questioning the order of the learned Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati (for short "the Tribunal") in M.V.O.P.No.695/2005, dated 23.09.2009, by and under which, the Tribunal awarded a total compensation of Rs.1,81,380/- to the 1st respondents/claimant for the injuries sustained by him in a accident, said to have taken place on 15.03.2004 at 10 a.m at Lakshmi Narayana Stone Crusher Unit, Puttur.

The brief facts of the case are that on 15.03.2004 when the claimant along with his friend Anand were proceeding on a TVS Victor motorcycle and when reached Anjeramma Ghat Road, near Lakshmi Narayana Stone Crusher Unit, a mini lorry bearing registration No.R.No.TN.10/B-6861 came in a rash and negligent manner and dashed the motorcycle, as a result, himself and his friend Anand grievous injuries.

The appellant/insurance company opposed the claim of the claimant on the ground that the driver of the motorcycle Anand is not having any valid driving licence, and that the accident took place due to negligence on the part of the injured, but not due to negligence on the part of the driver of the offending lorry and the claim is excessive and exorbitant.

On behalf of the claimant, PWs 1 to 3 are examined and Exs.A1 to A7 are marked. No oral or documentary evidence is adduced on behalf of the insurance company.

The Tribunal, after taking into consideration the evidence on record, awarded a sum of Rs.1,81,380/-. Aggrieved thereby, the insurance company filed the present appeal.

It is contended by the learned counsel for the appellant that the Tribunal has erred in awarding a sum of Rs.25,000/- towards permanent disability, while at the same time awarding Rs.85,320/- towards loss of future earnings. The learned counsel further contended that there cannot be award for any amount towards permanent disability and also loss of future earnings. Admittedly, the injured sustained only one fracture injury, and there is no satisfactory evidence on record to show that the injured has sustained permanent disability so as to hold that he is not able to earn his livelihood by carrying on any avocation.

Perused the material on record. The Tribunal has taken into consideration the fact that the injured-PW 1 has sustained the following injuries.

- 1) An abrasion of 1 c.m. x 1 c.m, right side of lower lip
- 2) A contusion of 10 c.m x 10 c.m over middle of left thigh

The Medical Officer-PW 2, who treated the injured, deposed that the injured sustained one fracture injury, due to which, he suffered disability to an extent of 20%.

The learned counsel for the appellant has rightly submitted that the disability certificate cannot be issued by a private medical practitioner, like PW 2, and in the absence of there being any satisfactory evidence that the injured suffered permanent disability, grant of Rs.25,000/- under the head "permanent disability" cannot be countenanced. There is sufficient force in this submission, for the reason that absolutely there is no material

on record to show that the injured has sustained permanent disability, in view of the fracture injury sustained by him.

With regard to grant of compensation under the other heads, such as, loss of future income, pain and suffering, medical expenses and future surgery, the Tribunal has taken into consideration the evidence oral and documentary on record and has determined the same on the basis of well accepted principles, and hence the same cannot be said to be excessive and exorbitant. Admittedly, the claimant, who was a man of 32 years, who was working as a driver by profession, has sustained injuries, resulting in fractures and prolonged treatment. In that view of the matter, the amount awarded under these heads cannot be interfered with, but only the amount that could not be granted to the injured is a sum of Rs.25,000/- towards permanent disability.

In view of the above, the MACMA is allowed in part. After deducting the amount of Rs.25,000/- granted under the head "permanent disability", the compensation amount of Rs.1,81,380/- is reduced to Rs.1,56,380/-. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAI SWAL,J

Date: 12.06.2017
Dsr