THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

MACMA No.1550 of 2010

JUDGMENT:

The appeal is preferred by the respondent Insurance Company questioning the correctness of the award passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (FAC)/IV Additional District Judge, Tanuku in M.V.O.P.No.1042/2008, dated 24.06.2010, by and under which the Tribunal awarded a total compensation of Rs.2,00,000/- for the injuries sustained by the claimant in an accident said to have taken place on 02.08.2008.

The brief facts of the case are that on 02.08.2008 the claimant was proceeding on his Hero Majestic Moped bearing registration No.AP37AN-2918 on the left side of the road, one truck auto bearing registration No.AP 37X-6024, being driven by the 1st respondent came in opposite direction in a rash and negligent manner and dashed the moped of the injured, due to which, the injured fell down and sustained facture and multiple injuries.

The Insurance company filed counter denying the material allegations and contended that the injured himself came in high speed and caused the accident, that the driver of the auto is not having driving licence and hence the 1st respondent has violated the terms and conditions of the policy and hence the insurance company is not liable to pay any compensation.

On behalf of the claimants, PWs 1 to 3 were examined and Exs.A1 to A13 were marked. On behalf of the respondents, RWs 1 & 2 were examined and Exs.B1 to B7 and Ex.X1 were marked.

The Tribunal after considering the oral and documentary evidence awarded the compensation as claimed by the claimant. Aggrieved by the same, the Insurance Company filed the present appeal.

The learned counsel for the insurance company submits that the driver of the offending vehicle had no valid driving licence. Admittedly, the offending auto is a transport vehicle, whereas the driver was having only for non-transport vehicle licence. Upon appraisal of the evidence on record, the Tribunal having held that the insurance company is not liable to pay compensation in view of the violation of the terms of the policy, however, directed the insurance company to pay the compensation and recover the same from the insured owner of the offending vehicle. In this aspect the observations of the Supreme Court made in *Oriental Insurance Co.Ltd. v. Nanjappan*[1] needs to be taken into consideration, which is extracted as under:

> "8. Therefore, while setting aside the judgment of the High court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. The for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which

[1] 2004 ACJ 721

> the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

In so far as the quantum of compensation is concerned, the Tribunal has taken into consideration the monthly income of the deceased at Rs.3,000/- and based upon the evidence of the medical officers PWs 2 & 3 and medical record, held that the injured sustained 40% disability and applying the formula, determined the compensation at Rs.2,44,800/-. The procedure adopted by the Tribunal is erroneous for the reason that the evidence placed by the injured does not prove that the injured sustained any permanent disability so as to award any amount under this head. The evidence placed before the court no doubt shows that claimant has sustained the following injuries:

1. Laceration over the chin.
2. Laceration over the ulnar border of right palm.
3. Fracture of right clavicle.
4. Fracture of right fumer.
5. Grossly swollen left cheek.

The evidence in so far as the injured suffering permanent disability is deficient. The competent authority should certify that the injured sustained disability. The disability certificate should be issued by a competent authority i.e., the Government Medical Officer. The private medical practitioner cannot issue such certificate certifying that the injured sustained permanent disability. PW 2 who issued Ex.A10 disability certificate categorically admitted that he has neither treated the injured nor examined the medical record and without doing so, on the basis of physical examination, he issued the certificate.

PW 3 who treated the injured stated that the injured sustained the injuries, as mentioned above. He has not mentioned on any medical record which has been produced and marked as exhibits that the injured sustained disability of 40%, therefore, the evidence produced by the injured is not sufficient to prove that he sustained 40% disability and the quantum of compensation granted on this count has to be modified.

Admittedly, the injured sustained three fracture injuries and two simple injuries to his right clavicle, right tenure and right left tibia. Therefore, for each fracture injury, an amount of Rs.15,000/- each can be awarded. In addition to that, the injured sustained three more injuries, viz., lacerations over the chin, over the ulnar boarder of right palm and simple injury on left cheek. For each simple injury, an amount of Rs.5,000/- each can be awarded. Therefore, for the injuries sustained by the claimant, a compensation of Rs.60,000/- can be awarded. In addition to that, there is evidence to show that the injured was bedridden for a substantial period. Therefore, towards loss of earnings, a sum of Rs.20,000/- can be awarded. As seen from the record, the injured underwent surgeries to his fractures and incurred expenditure and therefore, towards pain, suffering and medical expenses, a sum of Rs.20,000/- can be awarded. In all, the injured is entitled to an amount of Rs.1,00,000/- as compensation. However, the Tribunal awarded a sum of Rs.2,00,000/-, which needs to be reduced to Rs.1,00,000/-

In view of the foregoing discussion, the MACMA is allowed in part, the award of compensation granted by the Tribunal is reduced from Rs.2,00,000/- to Rs.1,00,000/- together with interest @7.5% p.a thereon from the date of claim petition till realization along with costs.

The learned counsel for the appellant/insurance company submits that pursuant to the directions of this court, they have deposited 50% of the awarded amount. If such being the case, the appellant insurance company is directed to pay the difference of amount, if any, after making calculations, and recover the same from the 2nd respondent herein, who is owner of the offending vehicle, by following the procedure laid down in *Oriental Insurance Co.Ltd' case* (1 supra).

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

M.S.K.JAISWAL,J

Date: 21.06.2017
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