

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

MACMA No. 1288 of 2010

JUDGMENT:

The appellant/ claimant preferred the present appeal questioning the Judgment and Decree, dated 25.02.2010 in MVOP.No.133 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupathi, being dissatisfied with the award of compensation of Rs.7,000/- as against his claim for Rs.2,00,000/-, towards the injuries sustained by him in the accident said to have taken place on 16.11.2007 at about 7.00 p.m., on Renigunta-Srikalahasthi road, near Vinsari Petrol Bunk.

2. The brief facts of the case are that on 16.11.2007 at about 7.00 p.m., while the injured, as a pillion rider and one Mohan Rami Reddy @ Murali, as a rider, were going on a motor cycle, a bus bearing TN.27R-7227, belonging to the 1st respondent, came in a rash and negligent manner from behind and dashed the motorcycle, as a result of which the claimant and the rider sustained injuries and taken to SVRRGG Hospital, Tirupathi in 108-Ambulance. Hence, the claim.

3. Before the Tribunal, the first respondent remained *ex parte* and the 2nd respondent/ Insurance Company denied the negligence of the driver of the bus. It is also stated that the driver of the 1st respondent was not holding a valid driving licence and the offending bus, which is a spare bus, had no valid permit, and therefore the driver violated the conditions of the policy, and therefore, the Insurance Company is not liable to pay any compensation.

4. The Tribunal, after hearing both sides, and after considering the entire material on record, awarded a sum of Rs.7,000/- in all towards pain and suffering and the incidental expenses. Dissatisfied with the said quantum of compensation, the injured preferred the present appeal.

5. The learned counsel for the appellant/claimant submits that the voluminous evidence has been produced by the appellant to show that the injured sustained injuries, hospitalized for a considerable period and the medical records to show that he has incurred nearly Rs.15,000/- towards medicine. However, the Court below erred in awarding a meagre sum of Rs.7,000/- as against the claim of Rs.2,00,000/-. Therefore, the learned counsel seeks for enhancement of the compensation.

6. On the other hand, the learned counsel appearing for the Insurance Company submits that the compensation awarded by the Tribunal is just and reasonable and is based on legal and acceptable evidence that has been produced by the claimant. He further submits that the claimant failed to examine the Medical Officer, who treated him. Therefore, the tribunal was right in awarding Rs.7,000/- as compensation, which does not warrant interference.

7. Heard the learned counsel appearing for both the parties and considered the material on record.

8. The fact that the accident took place on the date, time and place mentioned above is not in dispute. The objection raised by the Insurance Company was about the liability of the Insurance

Company and directing it to pay the amount to the claimant first and recover the same from the insured subsequently, for the reason that there was a material breach of the terms of the policy, and the offending bus is not having any valid permit on the date of the accident. However, the Tribunal has taken into consideration the oral and documentary evidence for arriving the said finding, which is not seriously challenged. Therefore, what is required to be seen in this appeal is whether the amount awarded by the Tribunal is just and reasonable.

9. The injured/ claimant was aged about 45 years, and as per his own evidence and Ex.A.2-Wound Certificate, he sustained two simple injuries. PW-2 is the doctor, who has been working in SVIMS, Tirupathi, and he deposed about the treatment given to the injured in the said Hospital from 16.11.2007 to 20.11.2007. The Medical Officer, though did not treat the injured, has spoken about the treatment given to the injured while he was in patient at SVIMS, Tirupathi. The claimant has also produced Ex.A.6, which is a bunch of nine Medical Bills, showing the cost of medicines incurred at Rs.3,586/- . Ex.A-7, a bunch of four cash receipts, shows that the claimant has spent an amount of Rs.11,122/- for the medicines etc. The medical record under Ex.A.3-discharge summary, and Ex.A.4-Out Patient Card dt. 16.11.2007 issued by SVIMS Hospital, Tirupati, also show that the injured was in hospital for four days for the treatment.

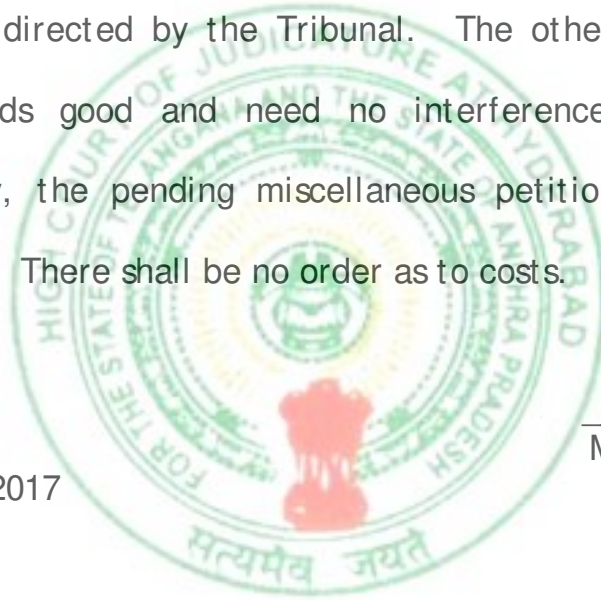
10. Therefore, taking into consideration the above facts and circumstances, I feel a total compensation of Rs.50,000/- (Rupees

fifty thousands only) is the just and reasonable compensation for the injuries sustained by the claimant towards pain and suffering, medical expenses, transportation and other incidental charges. Therefore, the appeal is liable to be allowed to that extent.

11. In the result the appeal is partly allowed granting compensation of Rs.50,000/- (Rupees fifty thousands only) in all counts, which the 2nd respondent is liable to pay with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, and recover the same from Respondent No.1 in accordance with law as directed by the Tribunal. The other findings of the Tribunal holds good and need no interference of this court. Consequently, the pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 20.06.2017
Kv

M.S.K.JAISWAL, J



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