

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

M.A.C.M.A.No.1212 of 2010

JUDGMENT

The appellant/insurance company preferred this appeal against the judgment and decree dated 17.06.2009 in MVOP No.1813 of 2006 on the file of Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

3. The facts, in brief, are that on 24.09.2005, while the petitioner was traveling as pillion rider on a motorcycle bearing No.AP 28 AG-5092 from Jadcherla to Hyderabad and when they reached Nandigam village, a tractor bearing No.AP-22-V-2735 belonging to R1 came from opposite direction driven by its driver, namely, Siddaiah, in a rash and negligent manner and dashed against the motorcycle, due to which, the petitioner sustained grievous injuries and immediately, he was shifted to Area Hospital, Shadnagar, and thereafter to NIMS hospital, Hyderabad, for treatment. Hence, he filed the claim petition claiming a sum of Rs.2,00,000/- for the injuries sustained by him.

4. R1 and R2 are the owner and insurer of the crime vehicle. R1 remained *ex parte*. R2 filed counter denying the occurrence of accident and the nature of injuries sustained by petitioner. It is stated

that the driver of crime vehicle was not having valid driving licence at the time of accident.

5. Based on the pleadings, the Tribunal framed three issues. During enquiry, the petitioner examined himself as P.W.1 and got marked Exs.A1 to A14. On behalf of respondent, RW1 was examined and Exs.B1 to B6 were marked.

6. After considering the entire evidence on record, the Tribunal awarded compensation of Rs.52,000/- for the injuries sustained by the petitioner.

7. Learned counsel for appellant/insurance company contended that the driver of crime vehicle was not having valid licence at the time of accident. He further contended that though there is no medical evidence by examining the doctor, who treated the injured, in support of the injuries sustained by petitioner, the Tribunal ought not to have awarded compensation to the petitioner.

8. I have gone through the oral and documentary evidence produced before the Tribunal. Insofar as licence is concerned, the insurance company has relied upon Exs.B6-letter, issued by Additional Licensing Authority, Warangal-II to R2, wherein it was mentioned that the driving licence was not issued to one D. Siddaiah, however, on the reverse of it, the particulars of driving licence were mentioned. Therefore, the Tribunal observed that the stand of the respondent is self-contradictory. On one hand, Ex.B6 shows that the driver was possessing non-transport valid driving licence on the date of accident, but curiously, it was mentioned

therein that the driving licence was not issued to one D.Siddaiah. In view of the nature of the document relied upon by the insurance company, though a doubt arises there from, the insurance company cannot be absolved from its liability on the plea that the driver of the crime vehicle had no driving licence or the owner of vehicle-R1 had violated the terms and conditions of the policy. The Tribunal has rightly appreciated this aspect and held that the driver of the offending vehicle had valid driving licence on the date of accident.

9. Insofar as quantum of compensation is concerned, the Tribunal observed that P.W.1 sustained fracture injury to right fibula, which is grievous and an abrasion on the right dorsum of the hand, which is simple in nature and Ex.A5-discharge record of NIMS Hospital also shows that P.W.1 sustained fracture injury to right fibula. Even though P.W.1 has produced the disability certificate-Ex.A8, the same has not been accepted by the Tribunal. Therefore, taking into consideration the nature of injuries sustained by petitioner and also the medical evidence, the Tribunal awarded compensation of Rs.52,000/- and by no stretch of imagination, it can be said to be excessive or exorbitant. Further, the examination of medical officer is not a sine qua non for accepting the documentary evidence produced by P.W.1, i.e., Ex.A5-discharge record of NIMS Hospital and therefore, non-examination of doctor cannot be said to be fatal and that itself is not a ground to discard the injury certificate-Ex.A4.

10. In view of the foregoing reasons, there are no grounds warranting interference by this Court. Hence, there are no merits in

the appeal and the appeal is accordingly dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

M.S.K. JAISWAL, J.

6th June, 2017
sj

