HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A.No.2565 of 2005

JUDGMENT:

1. This appeal is filed by the New India Assurance Company against the award dated 31.12.2004 passed in M.V.O.P No.573 of 2002 by the II-Additional District Judge, Motor Vehicle Accidents Claims Tribunal, Kurnool. Respondent No. 1 herein is the claimant and the 2nd respondent is the owner and driver of the crime Auto in the said O.P.

2. Brief facts of the claim petition are that on 17.02.2002 at about 8.30 A.M. while the claimant and others were traveling in an Auto bearing No.A.P.21U.8890 from Thummaluru village to Nandikotkur and when they reached near Jupadu bungalow village, the driver drove the Auto at high speed in a rash and negligent manner, due to which, the Auto turned turtle and the occupants of the auto sustained injuries including the claimant who sustained grievous injuries. The claimant and the other injured were shifted to Government General Hospital, Kurnool for treatment, and from there to Viswa Bharathi Hospital, Kurnool for better treatment, where his left hand was amputated. Consequently, the claimant laid a claim before the Tribunal seeking compensation of Rs.3,00,000/-.

3. The Insurance Company resisted the claim by filing counter, *inter alia*, contending that the driver of the Auto was not possessing valid driving licence to drive the Auto and hence the Insurance Company is not liable to indemnify the liability of the owner of the offending vehicle. It is further contended that the compensation claimed by the claimant is highly excessive and exorbitant.

4. During enquiry, on behalf of the claimant, P.Ws.1 to 3 were examined and Exs.A1 to A7 were marked. On behalf of the Insurance Company, R.Ws.1 and 2 were examined and Exs.B1 to B3 were marked. P.W.1 is the claimant. P.W.2 is the doctor who treated P.W.1 for the injuries sustained by him in the accident. P.W.3 is the Accountant in Viswabharathi hospital, Kurnool. Ex.A1 is the copy of the F.I.R, Ex.A2 is the copy of the wound certificate of the claimant, Ex.A3 is the copy of the charge sheet, Ex.A4 is the copy of the judgment in C.C.No.56 of 2002, Ex.A5 is the bill issued by Viswabharathi hospital, Kurnool, Ex.A6 is the bunch of medical bills and Ex.A7 is the pattadar pass-books. Eventually, at the culmination of enquiry, basing on the evidence of P.W.1 and Exs.A1 to A4, the Claims Tribunal held that the accident occurred due to rash and negligent driving of the Auto by its driver and then the Tribunal assessed the compensation and arrived at

Rs.2,19,550/- and passed the award accordingly. Assailing the said award, the appellant-Insurance Company filed this appeal.

5. Though the appellant assailed the award of the Tribunal on many grounds, the learned Standing Counsel for the appellant-Insurance Company raised only one contention that the Insurance Company cannot be held liable to pay the compensation amount to the claimant as the driver of the offending vehicle was not possessing valid driving licence to drive the vehicle at the time of accident.

6. On the other hand, learned Counsel for the 1st respondent-claimant submits the award of the Claims Tribunal is quite legal and valid and in that view of the matter, no interference is called for.

7. I have considered the respective contentions of the parties and perused the impugned award passed by the Claims Tribunal.

8. It is pertinent to note that during trial, the appellant-Insurance Company examined its Senior Assistant working in the office of the Regional Transport Authority, Kurnool, as R.W.2 to speak about the particulars of the driving licence possessed by the driver of the offending vehicle. The Tribunal at paragraph-9 of its judgment made the following observations:

"The evidence of R.W.2 is to the effect that the driving licence covered by Ex.B1 was issued in favour of respondent No.1 on 30.10.1998 from their office and he can drive both Light Motor Vehicle and Heavy Motor Vehicle and he is not authorized to drive three wheeler Auto. The contents of Ex.B1 driving licence extract shows that respondent No.1 was authorized to drive L.M.V. (Transport) with effect from 26.06.2000 and valid from 26.06.2000 to 25.06.2003 and he is also authorized to drive Heavy Transport Vehicles under the badge No.3621. Therefore, from the contents of Ex.B1, it is clear that respondent No.1 is authorized to drive L.M.V. (Transport) and also Heavy Transport Vehicles as on the date of the accident. Therefore, the only contention of respondent No.2 is that he is not specifically authorized by the licensing authority to drive L.M.V. three wheeler Auto. This contention of respondent No.2 has no legs to stand in view of the categorical decision of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Swaran Singh and others (2004 ACJ 1), wherein it is held as follows:

"If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example when a person is granted a liccence for driving a light motor vehicle he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately."

9. The finding of the Tribunal is that the contents of Ex.B1-driving licence clearly disclose that the driver of the vehicle in question was authorized to drive Light Motor Vehicles (Transport) and also Heavy Transport Vehicles. Since Ex.B1-

driving licence clearly indicates that as on the date of alleged accident, the driver of the offending vehicle was possessing valid licence to drive Light Motor Vehicles (Transport) and also Heavy Transport Vehicles, the contention, if any, raised by the learned Counsel for the appellant has no legs to stand. The Tribunal, relying on the aforesaid decision of the Supreme Court, rightly held that the driver of the offending vehicle was authorized to drive the Light Motor Vehicle (Three Wheeler Auto) under the driving licence covered by Ex.B1. In view of the above, the contention of the learned Standing Counsel for the appellant-Insurance Company is not accepted and accordingly the insurance company cannot be exonerated from its liability to pay compensation to the claimant.

10. Coming to the question of quantum of compensation amount, the learned Standing Counsel for the appellant-insurance company has not challenged the findings of the Tribunal, except with regard to interest on the compensation amount. However, it is found from the record that the Tribunal, believing the evidence of P.W.1-claimant and P.W.2-doctor, who has examined P.W.1, that the claimant sustained permanent disability of 60%. Considering all these aspects, the Claims Tribunal has rightly awarded compensation of Rs.1,62,000/- towards permanent disability, apart from

Rs.6,750/- towards loss of earnings; Rs.25,800/- towards medical expenses, extra nourishment and transportation charges and Rs.25,000/- towards pain and suffering. The compensation of Rs.2,19,550/- awarded by the Tribunal is just and reasonable. Therefore, the award passed by the Tribunal cannot be interfered with and accordingly it is upheld except to the extent of rate of interest.

11. The Tribunal granted interest @ 9% P.A. on the compensation amount which is also questioned by the learned Standing Counsel appearing for the insurance company that basing on the prevailing interest rates being charged by the Nationalized Banks, it is on higher side. Accepting the said contention, the rate of interest is reduced from 9% P.A to 7.5% P.A.

12. With the above modification in the rate of interest, the appeal is partly allowed. No order as to costs. Miscellaneous applications, if any pending, shall stand closed.

JUSTICE J.UMA DEVI

10-02-2017
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