HON'BLE Ms. JUSTICE J. UMA DEVI

M.A.C.M.A. No.2144 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by respondent No.2 – M/s. National Insurance Company Limited (for brevity "the insurer"), aggrieved by the order and decree dated 04.07.2005 in M.V.O.P.No.294 of 2002 passed by the IX Additional District and Sessions Judge (FTC), Machilipatnam, Krishna District (for brevity "the Tribunal"), whereby and whereunder a total compensation of Rs.38,000/- was awarded for the injuries sustained by the 1st respondent – claim petitioner with interest at 9% per annum from the date of petition till the date of realization, as against the claim of Rs.1,50,000/- laid under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for brevity "the Act").

2. Respondent No.1 herein is the petitioner in O.P.No.294 of 2002. Respondent No.2 herein is the Driver-cum-owner of the offending vehicle i.e., Hero Honda bearing No.AP 16A 8699 and has been arrayed as respondent No.1 in M.V.O.P.No.294 of 2002. For the sake of convenience, the parties hereinafter will be referred as petitioner and respondents as they are arrayed in M.V.O.P.No.294 of 2002.

3. The facts of the case are briefly stated as follows:

That on 20.07.2002 at about 7.30 p.m., while the petitioner was waiting for a bus at the Bus stop situated Opp: to Sri Venkata Datta Way Bridge, at Machavaram Village, a Hero Honda bearing No.AP 16A 8699 driven by the 1st respondent – owner with high speed and in a rash and negligent manner, came in a wrong side without blowing horn and dashed the petitioner and as a result of it, he sustained grievous and bleeding injuries to his both legs, apart from other injuries all over the body. Based on the statement given by the petitioner, a case in Crime No.46/2002 was registered by the police against the 1st respondent – owner-cum-driver of the offending vehicle. The petitioner laid the claim for a compensation of Rs.1,50,000/- as against respondent Nos.1 and 2, who were the owner-cum-driver and the insurer, of the offending vehicle. Both the respondents filed separate counters denying the manner in which the accident occurred and also their liability to pay the compensation.

4. During the course of trial, the petitioner got examined himself as P.W.1, besides examining another witness and the doctor, who treated him, as P.W.2 and P.W.3, and marked Exs.A.1 to A.6 and also Ex.X.1. On behalf of the 2nd respondent – insurer, R.W.1 was examined and through him Exs.B.1 to B.3 were marked.

5. The Tribunal, relying on oral testimony of P.W.1 and the other documents produced by him, held that the accident dated 20.07.2002 occurred due to the rash and negligent driving of the offending vehicle i.e., Hero Honda bearing No.AP 16A 8699 by respondent No.1. The Tribunal, on appreciation of the evidence adduced by P.W.3 – Dr. Sai Prasad and Exs.A.4 and A.5, which were the bunch of medical bills and X-ray films (three), respectively, awarded a total compensation of Rs.38,000/- as against his claim of Rs.1,50,000/- and held the respondents liable to pay such amount to him jointly and severally. Aggrieved by the said order passed by the Tribunal, the present Civil Miscellaneous Appeal is preferred by the 2nd respondent, who is the insurer of the crime vehicle.

6. Heard Sri A. Veeraswamy, learned Standing Counsel for the appellant – insurer, as well as Sri G. Narasimha Rao, learned counsel for respondent No.1 – claim petitioner, and perused the material on record.

7. Learned Standing Counsel for the appellant – insurer would submit that the Tribunal failed to appreciate the crucial aspect that by the date of accident, the Insurance Policy of the crime vehicle was not in force, as it was valid from 26.07.2002 to 25.07.2003. The Tribunal had wrongly held the 2nd respondent - insurer liable to pay the compensation. Since the Insurance Policy taken in respect of

the offending vehicle was not in force as on the date of taking place of accident, the Tribunal ought not to have held the appellant liable to pay the compensation.

8. The 2nd respondent – insurer had relied upon Exs.B.2 and B.3 – Copies of Insurance Policies relating to the crime vehicle. Ex.B.2 – Insurance Policy was issued by the 2nd respondent – insurer in respect of offending vehicle i.e., Hero Honda bearing No.AP 16A 8699 in the name of the 1st respondent for the period from 26.07.2002 to 25.07.2003. Ex.B.3 Insurance Policy was issued by the appellant in the name of one Md. Mahabub Ali, from whom the 1st respondent – owner-cum-driver appeared to have purchased the offending vehicle and the same was in force from 10.06.2002 to 09.06.2003. By producing the aforesaid documents, the 2nd respondent – insurer made an endeavour to convince the Tribunal that by the date of the alleged accident, the Insurance Policy of the offending vehicle was not in force. The Tribunal, having been convinced with the above mentioned documentary evidence produced by the appellant in support of its contentions, though fastened the liability against the appellant herein and the owner of the crime vehicle, gave liberty to the appellant to proceed against the vehicle owner for recovery of the compensation so paid, upon satisfying the award passed in favour of the petitioner. On the above mentioned finding of the Tribunal, this Court does not want

to make any comment, as the contents of both Exs.B.2 and B.3 Insurance Policies indicate that the said policies were not in force, at the material point of time. Merely because that Ex.B.2 policy is not in force, at the relevant point of time, the 2nd respondent – insurer cannot escape from its liability to pay the compensation to the petitioner, since liberty is given by the Tribunal to the 2nd respondent – insurer to proceed against the 1st respondent - owner of the offending vehicle, for recovery of the compensation paid by it, the appellant has to satisfy the award passed by the Tribunal in favour of the petitioner by depositing the compensation amount, and then proceed against the 1st respondent – owner-cum-driver of the offending vehicle for recovery of the compensation amount paid by it.

9. Coming to the quantum of compensation awarded by the Tribunal is concerned, the Tribunal has properly assessed the compensation amount by taking into consideration the evidence available on record and the injuries sustained by the petitioner and also the treatment taken by him under the care and supervision of P.W.3 – Doctor. Hence the same needs no intervention.

10. The learned Standing Counsel submits that the Tribunal ought to have awarded interest at a lesser rate, instead of awarding at 9% per annum, in view of the authoritative pronouncements of the Hon'ble Supreme Court.

11. Accepting the above contentions of the appellant, rate of interest awarded by the Tribunal at 9% per annum is reduced to 7.5% per annum, by following the ratio laid down in RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS[1].

12. Accordingly, the Civil Miscellaneous Appeal is disposed of, confirming the award passed by the Tribunal for Rs.38,000/-. However, the interest is reduced to 7.5% per annum from 9%. Except the interest portion, rest of the order passed by Tribunal is hereby affirmed. There shall be no order as to costs.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE J. UMA DEVI

21.04.2017.
Msr

[1] 2013 ACJ 1403

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