

SMT.JUSTICE T.RAJANI

MACMA No.414 of 2006

JUDGMENT:

This appeal is filed by the appellant, who is the claimant before the IV Additional District Judge, East Godavari, Kakinada, assailing order dated 18.08.2005 in M.V.O.P.No.281 of 2002, on the grounds that the Tribunal failed to follow the ratio laid down by the Apex Court in various judgments, that a third party should not be put to loss on the ground of violation of the conditions of the policy, the Tribunal also ignored the grievous nature of the injuries while awarding compensation and awarded paltry amount in spite of there being 10% disability to the claimant.

Heard the learned counsel for the parties and perused the material on record.

Learned counsel for the appellant, in support of his contention that the Tribunal ought to have made an order of pay and recover against the 2nd respondent/insurance company, relied upon a judgment of this Court in **New India Assurance Co. Ltd. V. Darji Laxmi and others**¹, wherein, in a similar case, an order of pay and recover was made against the insurance company, following the decisions rendered by the Apex Court in **S.Iyyapan V. United India Insurance Co. Ltd.**² and **Kulwant Singh V. Oriental Insurance Co. Ltd.**³

Hence, the order of the Tribunal to the extent of dismissing the claim against the 2nd respondent/insurance company in toto is set aside and the 2nd respondent/insurance company shall satisfy the award of the Tribunal and recover the compensation awarded, from the 1st respondent/owner of the vehicle.

¹ 2016 ACJ 1042

² 2013 ACJ 1944 (SC)

³ 2014 ACJ 2873 (SC)

With regard to the quantum of compensation awarded by the Tribunal, learned counsel for the appellant contends that the claimant being labourer would be hurdled by 10% disability which is in the nature of contraction of fingers and stiffness. The evidence of P.W.3, which is that of Assistant Professor, Orothopaedics, GGH, Kakinada, shows that the claimant developed flexion contraction of right index, middle and ring fingers because of the injuries to the soft tissues to the right hand.

Learned counsel for the 2nd respondent/insurance company vehemently contended that injuries suffered by the appellant being simple in nature cannot be awarded with more than Rs.1,000/-. But, I opine that, a just claim of compensation cannot be rejected, going by the nomenclature given to the injuries, wherein simple injuries also result in severe consequences and would have impact on the future avocation of the claimant. It would result in travesty of justice. Awarding Rs.7,000/- towards 7 simple injuries at Rs.1,000/- for each simple injury may be appropriate, but awarding only Rs.10,000/- for 10% disability appears to be a bit unreasonable. By considering the case in a holistic manner, I opine that awarding another Rs.10,000/- towards loss of future amenities would meet the ends of justice.

In the result, the appeal is partly allowed, enhancing the amount of Rs.20,000/- granted by the Tribunal to Rs.30,000/- (Rupees Thirty Thousand only). The award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Tribunal. Proportionate costs are ordered.

Miscellaneous petitions if any pending in the appeal stand closed.

T. RAJANI, J

June 23, 2017
MRR