

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

MACMA No. 1530 of 2013

JUDGMENT:

This appeal is preferred by the appellant/ Insurance Company questioning the Judgment and Decree of the IX Additional District & Sessions Judge (Fast Track Court) Ranga Reddy district at L.B.Nagar, Hyderabad, dated 29.01.2013 in O.P.No.394 of 2009, by and under which the Tribunal awarded a compensation of Rs.1,50,000/- for the injuries sustained by the claimant in the accident that took place on 18.01.2009.

2. The brief facts of the case are that on 18.01.2009 while the claimant was proceeding from Kodangal to Ravulapally, there was an accident at Yadgiri road, when the driver of the Lorry bearing No.AP28Y-8722 came in the opposite direction and dashed against the bike of the claimant, resulting in multiple injuries, including fracture of his right leg. The injured was treated at Sai Sharan Hospital from 18.01.2009 to 31.01.2009, during which a surgery was done and an iron rod was inserted in the right leg of the claimant.

3. The 2<sup>nd</sup> respondent in the appeal, who remained *ex parte* before the Tribunal, is the owner of the lorry, which was admittedly insured with the Appellant/ Insurance Company and the policy was subsisting as on the date of the accident.

4. The Appellant/ Insurance Company contested the matter contending that the accident occurred due to the negligence of the claimant only, which was not even reported to the appellant. The appellant further contends that the claim for Rs.2,50,000/- is excessive and the injured is not entitled for any compensation.

5. During the course of trial, the Tribunal examined PWs.1 to 3, marked Exhibits A.1 to A.8, Ex.B.1 and Ex.C.1 and C.2.

6. The Tribunal, after hearing both sides and considering the entire evidence on record, concluded that the accident occurred due to rash and negligent driving of the driver of the crime vehicle, and basing on the evidence of PWs.1 to 3, and the material produced before it, the Tribunal has awarded an amount of Rs.1,50,000/- as compensation for the injuries sustained by the claimant. Aggrieved by the same, the Insurance Company preferred the present appeal.

7. The learned counsel appearing for the Appellant/ Insurance Company submits that the Court below has not appreciated the material on record in a proper perspective and has erred in awarding compensation at Rs.1,50,000/-, which is excessive.

8. On the other hand, the learned counsel appearing for the 1<sup>st</sup> respondent/ claimant submits that the claimant has sustained one grievous and three simple injuries and has undergone operation, in which an iron rod was inserted in his right leg, and therefore, the

Tribunal has properly awarded the compensation, which does not warrant interference in this appeal.

9. Heard the learned counsel appearing for both the parties and perused the entire evidence on record and also the impugned judgment. The fact that the accident took place due to the rash and negligence on the part of the driver of the lorry has been conclusively proved by the oral and documentary evidence that has been produced on behalf of the claimant. The oral evidence of PW-1/injured, coupled with Exs.A.1, A.2 and A.4, shows that the accident was occurred only due to the rash and negligent driving of the lorry driver, which came in opposite direction and hit against the motor cycle driven by the claimant. Therefore, the finding of the Tribunal that the accident was due to the rash and negligence on the part of the lorry driver cannot be said to be erroneous.

10. The next point to be considered is whether the compensation awarded by the Tribunal can be sustained or needs to be modified. As already stated, the injured was a young boy, aged about 20 years. On 18.01.2009 when he was proceeding on motor cycle, the accident took place. In his evidence, the injured stated that he sustained injuries on his right leg, which was grievous in nature. PW-2 was the Medical Officer, who treated the injured/ claimant from 18.01.2009 to 31.01.2009. He deposed that the injured undergone a surgery and an iron rod was inserted into his right leg,

and the injured has to undergo another operation for removal of the said iron rod, which may costs him at about Rs.15,000/- . The Tribunal has taken into consideration the oral evidence of PWs.1 and 2, and the medical record under Exs.A.3, A.5 to A.8 and determined the compensation at Rs.1,50,000/- for the injuries sustained by the claimant. The said amount cannot be said to be in any way unreasonable and excessive, as the same is based on valid record, which is just and reasonable. Therefore, the appeal fails and is liable to be dismissed.

11. In the result, the appeal is dismissed, confirming the order and decree of the Tribunal under appeal. The appellant/ Insurance Company shall deposit the balance amount within a period of two weeks and as and when the said amount is deposited, the respondent/injured is entitled to withdraw the entire amount without furnishing any security.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

M.S.K. Jaiswal, J.

Dt.25.07.2017

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Dated: 25.07.2017

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