

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A.No.1927 of 2010

JUDGMENT:

This appeal is arising out of the order and decree dated 14.07.2010 in M.V.O.P.No.202 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Court, Tirupati (for short, 'the Tribunal').

2. This is an appeal filed by the New India Assurance Company Limited, the second respondent challenges the impugned award in M.V.O.P.No.202 of 2008. The Original Petition was filed under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.6,00,000/- on account of injuries received by the claimant in the motor vehicle accident that took place on 03.11.2006 while he was going on a motorcycle.

3. The parties are hereinafter referred to as they are arrayed in the Original Petition.

4. The brief facts of the case are that on 03.11.2006 while the petitioner was going on motorcycle bearing No.AP 03/N 5866 from Tirupati to Srikalahasti on the left side of the road in a normal speed, when he reached Krishnapuram cross near Yerpedu Mandal, driver of the Tata Sumo bearing No.AP 26/W 4644, who was coming in opposite direction, drove it in a rash and negligent manner and lost control over the same and dashed against the motorcycle. As a result, the petitioner sustained grievous injuries all over his body and was admitted in SVRRGG Hospital, Tirupati for treatment and

his right leg was amputated upto knee. It is the case of the petitioner that the driver of the crime vehicle is son of the 1st respondent and he managed the witnesses and gave a false complaint before the Station House Officer, Yerpedu Police Station and the police registered a case in Crime No.64 of 2006 under Section 279 IPC against the petitioner and the case is pending as STC No.38 of 2007. The petitioner was earning Rs.3,600/- per month by running juice shop. The petitioner sustained permanent disability and unable to walk and attend to normal duties because of injuries sustained by him in the accident and he is unable to continue his previous business. Therefore, he claimed compensation of Rs.6,00,000/- against respondent No.1, owner and respondent No.2, insurer of the crime vehicle.

5. The 1st respondent filed counter denying the allegations made in the petition, but stated that his vehicle was insured with the 2nd respondent and pleaded that he is not liable to pay compensation to the petitioner. He further pleaded that the driver of the crime vehicle is having valid driving licence and it has also got valid registration certificate, hence sought for dismissal of the petition against him.

6. The 2nd respondent filed counter denying the allegations made in the petition including manner in which the accident has occurred. It is averred that the petitioner is to put strict proof of his age, occupation and income and denied the negligence on the part of the driver of the crime vehicle; and attributing the negligence to the

driver of the motorcycle. It is further alleged that the police of Yerpedu Police Station after investigation laid charge sheet against the petitioner for his negligent driving, and therefore, sought for dismissal of the petition.

7. Basing on the pleadings of the parties, the Tribunal has framed four issues and answered the issues holding that there is contributory negligence on the part of drivers of both the vehicles, and apportioned their liability at 75% and 25%, and held respondents 1 and 2 jointly and severally liable to pay the compensation of Rs.4,39,000/-. Aggrieved by the same, the insurer has preferred this appeal.

8. Heard the arguments of Sri Kota Subba Rao, learned Standing Counsel for the appellant and Sri B.S. Reddy, learned counsel for the 1st respondent/petitioner.

9. The short point that arises for consideration in this appeal is whether the amount of compensation awarded by the Tribunal towards medical expenses of Rs.70,000/- is excessive and not in accordance with the II Schedule under Section 163-A of the Act?

POINT:

10. The accident is admitted. Fixing liability is also not disputed. The only dispute is with regard to award of compensation for medical expenditure of Rs.70,000/-. This is an appeal filed by the insurer, disputing quantum of compensation towards medical expenditure, as against the II Schedule of the Act.

11. Learned counsel for the appellant submits that the Tribunal awarded Rs.70,000/- towards medical expenses, which is not in accordance with II Schedule of Section 163-A of the Act. As per II Schedule of 163-A of the Act, the Tribunal can award only Rs.15,000/- towards medical expenditure. Therefore, requested to reduce the medical expenditure awarded by the Tribunal to Rs.15,000/-.

12. It is pertinent to note that as per II Schedule of Section 163-A of the Act, the maximum amount that can be awarded towards medical expenditure is Rs.15,000/-. Admittedly, the petition is filed under Section 163-A of the Act. In spite of that, Tribunal has awarded Rs.70,000/- towards medical expenses, which has to be reduced to Rs.15,000/- in view of Section 163-A Schedule II of the Act. No doubt, learned counsel for the 1st respondent submitted that the Tribunal has not taken into consideration the notional income of the petitioner at Rs.3,600/- per month and if that amount is taken into consideration, the petitioner may get more amount of compensation.

13. It is contended by the learned counsel for the petitioner that the petitioner has no objection to reduce the medical expenses to Rs.15,000/- as per II Schedule, if the income of the petitioner is taken into consideration as Rs.3,600/- per month.

14. As a matter of fact, this appeal is preferred by the insurer and not by the petitioner. Therefore, the amount cannot be enhanced in

this appeal by enhancing income of the petitioner. In an appeal preferred under Order XLI Rule 33 CPC, the appellate Court cannot give relief to the opposite party without filing cross objections or cross suits. In the instant case, there is no cross objection filed by the petitioner for enhancement of compensation and therefore, the amount cannot be enhanced as requested by the learned counsel for the petitioner, with regard to notional income of the injured by the Tribunal for assessment of his disability.

15. Considering the facts and circumstances of the case, considering the arguments of the learned counsel for the appellant, the amount of Rs.70,000/- awarded by the Tribunal is reduced to Rs.15,000/- and accordingly, the award of the Tribunal shall be modified.

16. In the result, the appeal is partly allowed modifying the award passed by the Tribunal by reducing the compensation from Rs.4,39,000/- to Rs.3,84,000/- and the rest of the award shall be intact.

Miscellaneous petitions, if any pending, shall stand closed.

There shall be no order as to costs.

GUDI SEVA SHYAM PRASAD, J

Date:13.04.2017
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