

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A.NO.1633 OF 2011

JUDGMENT

Aggrieved by the order and decree dated 22.11.2005 passed by the court of Motor Accidents Claims Tribunal (I Additional District Judge) at Khammam in O.P.No.935 of 2002, the Insurance Company filed the present appeal.

2. The case of the claimant is that, on 28.10.2001 while he was travelling with other passengers in a jeep bearing No. A P 04-A-9495 from Khammam to his village, when the jeep reached near Lingala Cross-road, the driver of the said jeep bearing No. AP 04-A-9495 drove it at high speed, in a rash and negligent manner, and applied sudden brake. Due to which, the jeep turned turtle; and the claimant sustained fracture to his left knee, left wrist, left forehead, laceration on left upper lip and upper teeth. He was shifted to Government Head quarters Hospital, Khammam, and from there subsequently shifted to a private Nursing Home at Khammam, where he was treated as an inpatient for about forty five days. He incurred an expenditure of Rs.40,000/- for treatment. Police registered a case in Crime No.87/0002, under Sections 304-A and 338 of IPC against the driver of the jeep. The claimant was a machine mechanic and due to injuries, he could not attend to his normal duties. He filed a claim petition under Section 166, of the Motor Vehicles Act, claiming compensation of Rs.1,50,000/- with costs and interest.

3. The respondents 1 and 2 are driver and owner of the crime vehicle, remained ex parte.

4. The 3rd respondent – Insurance company filed counter denying the averments made in the claim petition and sought for dismissal of the claim petition.

5. To prove his case, the claimant got examined himself as P.W.1, and got marked Exs.A-1 to A-4, a photo copies of FIR, a charge sheet, a motor vehicle inspector, reports and certified copy of the medical certificate. On behalf of the respondents, no witness was examined and only copy of the insurance policy was marked as Ex.B-1.

6. The Tribunal, based on oral and documentary evidence available on record, held that accident occurred due to rash and negligent driving of the driver of the crime vehicle. Considering the nature of injuries, the Tribunal awarded Rs.40,000/- for injuries, apart from that amount, an amount of Rs.2,000/- for pain and suffering, Rs.5,000/- towards expenses for extra nourishment and transportation. Towards loss of earnings, the Tribunal awarded Rs. 4,500/-. Thus, in all the Tribunal awarded an amount of Rs.51,500/- under the above heads, with interest at 9 per cent per annum from the date of the petition till realization and made all the respondents i.e., driver, insured and the insurer, jointly and severally liable to pay compensation. Assailing the order of the Tribunal, the Insurance Company filed the present appeal.

7. This court while ordering notice before admission on 6.7.2006 granted interim stay of execution, subject to the appellant – insurance company depositing half of the awarded amount with proportionate costs and interest and claimant was permitted to withdraw Rs.25,000/- and the

remaining amount was directed to be kept in fixed deposit in the nationalized bank.

8. Sri E.Venugopal Reddy, learned Standing Counsel appearing for the appellant - insurance company submitted that at the time of accident, the jeep was carrying more number of passengers than permitted capacity. The jeep was run on hire, which amounts to violation of policy conditions. Since the claimant was inmate of the jeep, he is not a third party, as such there is no coverage of insurance.

9. It is contended that the Tribunal without considering the violation of policy conditions, granted compensation. It is further contended that the claimant did not receive any fractures, and they are lacerated injuries, simple in nature, but the Tribunal awarded excessive compensation of Rs.40,000/-. He further contends that the Apex Court, and this court are usually granting interest at the rate of 7.5 per cent per annum; but the Tribunal has awarded interest at the rate of 9 per cent per annum, which requires to be reduced. On these averments, the learned counsel has sought to set aside the impugned order.

10. Per contra, Sri V.Brahmaiah Chowdary, learned counsel appearing for the 1st respondent – claimant submitted that the claimant is entitled for more compensation, for the nature of injuries suffered by him. Since claimant has not filed any appeal seeking enhancement, the impugned order may be confirmed.

11. As a matter of fact this is an appeal of the year 2011. Notices have been sent to respondents 2 and 3, the owner and driver and they were

returned un-served. However, they have remained ex parte before the Tribunal. Though the driver and owner of the vehicle, were fastened with liability along with the insurance company, no material is available that they filed any appeal against the impugned order.

12. The point arises for consideration is whether the impugned order warrants any interference?

13. The Tribunal based on the evidence of the claimant, who was examined as P.W.1 and considering the documents, copies of FIR, Ex.A-1, charge sheet, A-2, MVI report, A-3, and wound certificate A-4; and since no rebuttal evidence has been adduced by insurance company, recorded finding of fact that the driver of the jeep drove it in a rash and negligent manner, resulting the injuries in the said accident.

14. With regard to contention of the counsel for the appellant that more number of persons were travelling in the jeep at the time of accident that the vehicle is being run on hire and that this amounts to violation of policy conditions, is concerned, the said contention cannot be countenanced for the reason that except marking the copy of the insurance policy as Ex.B-1, the insurance company did not choose to lead any evidence or could elicit any thing from the cross-examination of P.W.1. Therefore, the said contention is rejected.

15. Coming to quantum of compensation, as per Ex.A-3 wound certificate, the claimant received two grievous injuries viz., laceration on left side upper lip, missing of 1, 2 and 3 left teeth, and contusion on left wrist and two simple injuries. Considering the nature of injuries, the Tribunal

awarded Rs.40,000/- for injuries. In fact under various heads, Rs.2,000/- for pain and suffering and Rs.5,000/- towards extra nourishment and transportation was awarded. The claimant was aged about 30 years at the time of the accident. He was a mechanic and earning an amount of Rs.200/- per month, because of the accident, he was prevented to attend the work for a period of three months. The Tribunal awarded Rs.4,500/- towards loss of earnings for a period of three months. In view of the nature of injuries suffered by the claimant, and evidence on record, the Tribunal, in my considered view, awarded reasonable amount, therefore, the same does not warrant any interference.

16. The Tribunal has granted interest at the rate of 9 per cent on the awarded amount. By placing reliance on the decision of the Apex Court in *RESHMA KUMARI v. MADAN MOHA*¹, grant of interest at the rate of 7.5 per cent, would meet the ends of justice. Accordingly, the interest awarded by the Tribunal at 9 per cent is reduced to 7.5 per cent per annum. Except the above modification in the rate of interest, the rest of the award of the Tribunal, shall remain in tact.

17. Accordingly the appeal is partly allowed, without costs.

18. Miscellaneous petitions pending if any, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

DATE: 13—02—2017
AVS

¹ (2013)9 SCC 65