

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.No.233 of 2010

JUDGMENT:

This appeal is filed by the insurance company - respondent in M.V.O.P.No.308 of 2006, against the award dated 26.08.2009 passed by the V Additional Motor Accident Claims Tribunal, Nellore.

The respondent herein filed the claim petition claiming a compensation of Rs.3,50,000/- for the injuries sustained by him in a motor accident that occurred on 20.01.2005. When the claimant was proceeding from Gollakandukur village on his Motor Cycle bearing registration No.AP26H-2073, he lost control over the vehicle and fell down and sustained injuries. He was aged about 46 years at the time of accident and he was a private employee. In the said accident the claimant sustained fracture of both bones of left leg and external fixation of tibia and split skin grafting was done.

The appellant/Insurance Company filed the counter and additional counter denying its liability.

On behalf of the claimant, P.Ws.1 to 3 were examined and got marked Exs.A.1 to A.7. On behalf of the Insurance Company, RW.1 examined and Ex.B.1 marked. Ex.C.1 – Xerox copy of case sheet also marked.

The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.1,00,000/- as against the claim of Rs.3,50,000/-. However, questioning the said award, the appellant-Insurance Company filed this appeal.

The Insurance Company who preferred the appeal mainly contends that the original petition is not maintainable before the Tribunal and the remedy of the respondent/injured lies in different forum on the ground that the policy that was issued to the respondent was personal accident policy. However, nothing is placed on record to show as to how an injured person

who took the policy for himself and sustained injuries in a road traffic accident cannot maintain the petition before the Tribunal. The admitted fact is that the injured was driving the two wheeler, which was insured with the appellant and paid the premium for covering personal accident as owner-cum-driver by paying a premium and the amount covered was Rs.1,00,000/-. Therefore, the Insurance Company cannot deny its liability to the extent stated above.

The present contention of the learned counsel for the appellant/insurance company that the injured/claimant has to approach firstly the insurance company and upon its inaction, has to move the Consumer Forum, is not sustainable for the reason that this contention is raised for the first time in the appeal, and in the counter and the additional counter filed by the insurance company before the Tribunal, no such plea about the maintainability and jurisdiction of the Tribunal to adjudicate the petition was raised. Therefore, this contention is rejected.

With regard to quantum of compensation, it is noticed from the impugned order that the Tribunal has taken into consideration all the aspects, including the evidence of the Medical Officer, medical bills, X-rays etc., and found that the appellant/claimant is entitled to a sum Rs.50,000/- towards pain and suffering, since he sustained grievous injury on his left leg which resulted in his undergoing operation

twice and being unable to attend his duties for a period of two months. The Tribunal has awarded Rs.6,000/- towards loss of earnings for a period of two months @Rs.3,000/- per month. The Tribunal has also awarded incidental expenses in addition to the medical expenses based upon the medical bills of Rs.61,450/-. Even though the Tribunal has found that the injured/claimant is entitled to compensation of Rs.1,19,950/-, but restricted to Rs.1,00,000/- for the reason that the policy that is issued is personal

accident coverage policy, and the liability of the insurance company cannot exceed for a sum of Rs.1,00,000/-.

Taking into consideration all the aspects, the Tribunal determined the compensation which is just and reasonable.

Upon perusing the oral and documentary evidence on record and the impugned award of the Tribunal, I see no reason to interfere with the said award. There are no merits in the appeal and the same is liable to be dismissed.

In the result, the appeal is dismissed.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 8th June, 2017

Dsr/smr



M.S.K.Jaiswal, J