

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

M.A.C.M.A.No.634 of 2010

JUDGMENT:

This appeal is filed by the insurance company – 1st respondent in M.V.O.P.No.244 of 2006, against the award dated 03.03.2009 passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, FAC IV Additional District Judge, Ongole.

The 1st respondent herein filed the claim petition claiming a compensation of Rs.1,00,000/- for the injuries sustained by him in a motor accident that occurred on 29.01.2006. While the claimant was proceeding from Konijedu village on his Motor Cycle bearing registration No.AP27G-9557 to attend his duties at Navodaya Vidyalaya, Ongole, and when reached near HB Colony, Ongole, two lorries came on his rear side with high speed and due to fear he went to the extreme left side of the road and lost control over the vehicle and fell down by the side of a canal and sustained injuries. He was a private employee. In the said accident the claimant sustained injuries over left knee and fracture of left femur. He underwent treatment from 29.01.2006 to 10.02.2006 as inpatient and was operated for his fracture.

The insurer filed the written statement denying its liability.

Before the Tribunal, the claimant examined himself as P.W.1 and also examined the Doctor as P.W.2 and marked Exs.A.1 to A.9. No evidence was adduced on behalf of the respondent/Insurance Company.

The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.33,000/- as against the claim of Rs.1,00,000/-. 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 appellant 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 he paid the premium for covering personal accident to owner-cum-driver by paying the premium and the amount covered was Rs.1,00,000/-. Therefore, the Insurance Company cannot deny its liability to the extent stated above.

The learned counsel for the appellant/Insurance Company submits that the policy cannot be said to be operative in the case where the insured himself fell down out of fear.

As seen from Section III-personal accident cover for owner-driver of the policy, it is not necessary that the accident should involve the insured person or the vehicle coming in contact or hit by any other vehicle. Suffice it that the insured was travelling on a vehicle which has been insured and by violent accidental fall if he sustained injuries, the Insurance Company is liable to indemnify the insured in terms of the covenants of the policy issued by the Insurance company.

The respondent sustained multiple injuries and even though produced evidence to show that he has sustained more expenditure for treatment, the Tribunal has restricted the claim only to Rs.33,000/- as against the total liability of the Insurance Company of Rs.1,00,000/-. As per the evidence on record, the accident took place when the injured was proceeding on his motorcycle which was duly insured under the policy and he fell from the motorcycle and sustained several injuries which were grievous in nature. Nothing concrete is elicited for disbelieving his claim that the accident took

place in the manner in which it is stated by the injured, who examined himself as P.W.1. 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. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

6th June, 2017
Dsr/ smr

M.S.K.Jaiswal, J

