THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

MACMA Nos.1301 and 3417 of 2005

COMMON JUDGMENT:

MACMA.No.1301 of 2005 is filed by the injured to enhance the compensation.

MACMA.No.3417 of 2005 is filed by the insurance company to set aside the award, dated 29.03.2005, passed by the learned Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge, Tirupati (for short 'the Tribunal'), in M.V.O.P.No.439 of 2000.

The parties hereinafter referred to as they were arrayed before the Tribunal in M.V.O.P.No.439 of 2000.

Learned counsel for the petitioner, who is the appellant in MACMA.No.1301 of 2005, would submit that the Tribunal had granted compensation of Rs.2,02,750/- with interest @ 9% against the petitioner's claim of Rs.20,00,000/- and that though there is evidence to show that the petitioner/injured is an income-tax assessee, he was earning Rs.1,50,000/- and more per annum and due to the accidental injuries, he suffered 45% disability, the Tribunal had not taken into consideration the same while determining the compensation payable and ultimately, prayed to enhance the compensation.

On the other hand, learned standing counsel for respondent No.2, who is the appellant in MACMA.No.3417 of 2005 and insurer of Tractor and Trailer bearing No.AP03 V 631 and AP03 V 632, would contend that the crime vehicle was insured for agricultural purpose and at the time of accident, it was carrying chairs and other tent house material; that the petitioner/injured is not a worker engaged in the crime vehicle and that the Tribunal erroneously directed respondent No.2/insurer to pay the compensation awarded at the first instance and recover the same from the owner of the crime vehicle. Learned counsel would also contend that the petitioner suffered only one grievous injury and one simple injury, as such, awarding compensation of Rs.2,02,000/- is excessive and ultimately, prayed to dismiss the claim against respondent No.2 - insurance company.

Learned counsel for respondent No.1 - owner of the crime vehicle, supported the award passed by the Tribunal.

In view of the contentions put forth by both sides, the points arose for determination are:

1. Whether the petitioner is entitled for enhancement of compensation? and
2. Whether the direction issued by the Tribunal to respondent No.2 - insurer to pay the compensation awarded at the first instance and recover the same from the owner of the crime vehicle is sustainable?

To substantiate his case, the petitioner examined himself as P.W.1 and examined P.W.2, doctor, and got marked Ex.A.1 – certified copy of wound certificate of petitioner, Ex.A.2 – discharge ticket issued by SVRR Hospital, Ex.A.3 – discharge certificate issued by MVS Accident Hospital, Vijayawada, Ex.A.4 – Medical bill issued by MVS Accident Hospital, Vijayawada, Ex.A.5 – salary certificate of petitioner, Exs.A.6 to A.8 – income-tax returns of petitioner for 1998-99, 1999-2000 and 2000-01 respectively, Ex.A.9 – X-rays (2) issued by Rayalaseema Hospital, Tirupati, Ex.A.10 – Permanent disability certificate of petitioner, Ex.A.11 – certified copy of charge sheet in C.C.No.228 of 1999 on the file of III Additional JFCM, Tirupati, and Ex.A.12 – certified copy of FIR in Crime No.98 of 1999 of Chandragiri Police Station, Tirupati. On behalf of respondent No.2 - insurance company, R.W.1 was examined. The

Tribunal having analyzed the entire evidence on record, granted compensation of Rs.2,02,750/- with 9% interest per annum from the date of the petition till the date of realization and directed respondent No.2/insurer to pay the compensation awarded at the first instance and recover the same from respondent No.2, who is the owner of the crime vehicle.

There is no dispute that the accident was occurred on 29.05.1999 due to rash and negligent driving of the driver of the crime vehicle and the petitioner sustained injuries in that accident. However, the evidence of P.Ws.1 and 2 and the documents marked as Ex.A.1 – certified copy of wound certificate and Ex.A.12 – certified copy of FIR, reveal the same. The Tribunal having analyzed the entire evidence on record rightly held that the petitioner suffered injuries due to rash and negligent driving of the driver of the crime vehicle. Therefore, no opinion can be substituted.

With regard to the contention of the learned counsel for the petitioner that the petitioner was working under respondent No.1 as a farm servant and earning Rs.1,50,000/- and more per annum and he is an income-tax assessee, it is to be seen that Exs.A.6 to A.8 are his income-tax returns. As the accident occurred on 29.05.1999, it is not appropriate to consider Exs.A.6 to A.8, which relates to 1998-99, 1992-2000 and 2000-01, to assess the annual income of the petitioner, and do not pertain to the date of accident, as rightly held by the Tribunal. The petitioner filed Ex.A.5 - salary certificate wherein his monthly salary is shown as Rs.6,000/- but he has not filed any books of accounts maintained by respondent No.1. P.W.1 categorically admitted that he is having ration card wherein his annual income is shown as Rs.10,000/-. Under these circumstances, it cannot be said that the petitioner was earning more than Rs.15,000/- per annum.

The evidence of P.W.2, who is an orthopedic specialist, reveals that the petitioner was admitted in the hospital on 02.02.2003. P.W.2 verified the previous record, which shows that the petitioner sustained injury to his right knee in a road accident on 29.05.1999 and took treatment in SVRR Hospital, Tirupati. He removed old screws and fixed new screws in the place of fracture and discharged the petitioner on 05.02.2003. The petitioner suffered 45% disability. There is also disability certificate, Ex.A.10, issued by the Medical Board. It also reveals that the petitioner suffered 45% permanent disability. The evidence of P.W.2 cannot be discarded. The Tribunal after analyzing oral and documentary evidence held that the petitioner suffered two simple injuries and one grievous injury and consequently, he suffered 45% disability. As per the records, the petitioner was aged 32 years as on the date of the accident. The Tribunal had relied on Schedule-II of the Motor Vehicles Act to assess the compensation payable for the disability and thereby, applied the multiplier '17' and granted an amount of Rs.1,14,750/- and also granted compensation on other scores, such as, Rs.70,000/- towards medical expenses relying on the medical bills; Rs.10,000/- towards attendant charges and Rs.7,000/- towards pain and suffering i.e., Rs.1,000/- for each simple injury and Rs.5,000/- for grievous injury.

The contention of the learned standing counsel for respondent No.2 - insurance company is that when O.P. is filed under Section 166 of the Motor Vehicles Act, the Tribunal ought not to have adopted multiplier '17' because as per **Sarla Verma & Others v. Delhi Transport Corporation and another**[1], the Tribunal has to take multiplier '16' for the age of 32. It is his further contention that the income of the petitioner assessed by the Tribunal is excessive. As per the record, earnings of the petitioner was Rs.50/- per day. The petitioner stated that he owns 5 acres of mango garden but he did not file any document to substantiate the same. Therefore, taking Rs.50/- as daily income of the petitioner cannot be faulted as the accident relates to the year

[1] (2009) 6 Supreme Court Cases 121

1999. The Tribunal had taken care in granting compensation on that score. Therefore, no infirmity can be found in the assessment of compensation by the Tribunal.

It is also the contention of the learned standing counsel for respondent No.2 - insurance company that there is violation of the terms and conditions of Ex.B.1 - insurance policy as such the direction issued by the Tribunal to pay the compensation to the petitioner at the first instance and recover the same from the owner of the crime vehicle is not sustainable. As seen from Ex.B.1 and the evidence of R.W.1, the crime vehicle was validly insured with the respondent insurance company. The policy was in force as on the date of accident. As seen from the evidence on record, the petitioner is not a gratuitous passenger. He was an employee working under the owner of the crime vehicle. There is violation of the terms and conditions of the policy. Therefore, the Tribunal relying on the decision reported in **New India Assurance Company Limited v. Kamla[2],** rightly directed respondent No.2/insurer to comply with the award at the first instance and recover the same from the owner of the crime vehicle.

Both the points are answered accordingly.

In the result, both the appeals are dismissed.

---

[2] AIR 2001 SC 1419

Pending miscellaneous applications, if any, shall stand dismissed in consequence. No order as to costs.

Dr. SHAMEEM AKTHER, J

12th OCTOBER, 2017.

kvni