

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 893 of 2010

JUDGMENT:

Aggrieved by the order dated 29.09.2009 passed in MVOP No.477 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Kadapa, the appellant, New India Insurance Company Limited filed this appeal.

2. The brief averments of the petition filed before Tribunal is that on 16.02.2006 the claimant was proceeding on a motor cycle bearing No.AP-03-E-4518, with pillion rider towards Rajampet, one tractor-trailor bearing No.AP04-U-8467 and 8468, came in the opposite direction and hit the motor cycle. The claimant sustained injuries to his left tibia and fibula and was rushed to the Government Hospital, Rajampet, from there he was referred to SVRR Hospital, Tirupathi, again, he was shifted to Christian Medical College, Vellore. The accident occurred due to rash and negligent driving of the rider of the motor cycle. The police have registered a case in Crime No.7 of 2006 under Sections 337 and 338 of IPC against the driver of the offending vehicle the tractor and trailer. Police filed the charge sheet against the driver of the tractor and trailer.

3. The 1st respondent remained ex parte, and 2nd respondent filed written statement, alleging that the rider of the offending vehicle was not possessing valid and effective driving licence. It is further alleged that the accident occurred due to the rash and negligent driving of the rider of the motor cycle. Therefore, the petition is bad for non-joinder of necessary parties who are the owner and insurer of the motor cycle. It is alleged that the claim was excessive, as such the petition is liable for dismissal.

4. The Tribunal on consideration of the evidence, awarded compensation of Rs.1,30,300/-. The appellant aggrieved by the quantum of compensation, preferred this appeal.

5. Heard arguments of learned counsel for the appellant and the respondents. The learned Standing Counsel for appellant submitted that the Tribunal held the insurance company not liable to pay compensation, however, the insurance company was directed to pay the compensation to the claimant and recover the same, from the owner of the vehicle. The learned counsel for the first respondent/claimant contends that the Tribunal has awarded inadequate compensation which is required to be enhanced.

6. At the out set, the main contention of the insurance company is with regard to passing of order of 'pay and recovery'.

7. In view of the findings of the Tribunal with regard to the award of compensation is concerned, they do not require any interference. The Tribunal has taken rightly the income of the claimant as Rs.3,000/- per month and calculated the disability at 15%. The said finding does not require any interference for reducing the compensation.

8. Learned counsel for the first respondent placed reliance on the decisions of the Hon'ble Supreme Court in *Slyyapan v. United India Insurance Co. Ltd.*¹ and submitted that in a case where the driver of the crime vehicle is not possessing valid driving licence, the liability of the insurer need not be fully exonerated and the insurer can be directed to pay the compensation to the victim and recover the same from the owner of the vehicle.

¹ (2013) 7 SCC 62

8. In the aforesaid decision, the Apex Court has given a clear finding that in a case of driver possessing the driving licence to drive the light motor vehicle, and had driven a commercial vehicle, or any other type of vehicle, though there is breach of conditions of the policy, the insurer to pay to the injured at the first instance and recover the same from the owner of vehicle, as the claimant involved in the accident was a third party cannot be jeopardized in view of the violation of terms and conditions of insurance policy, as the policy of insurer was binding on the parties to it who are insurer and insured. It does not bind the third parties.

9. In the result, the appeal is dismissed. The order of the Tribunal passed in MVOP No.477 of 2008 is confirmed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 28.03.2017.
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GUDISEVA SHYAM PRASAD, J

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