

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A No. 786 of 2010

JUDGMENT:

This appeal is arising out of the Judgment and Decree dated 15.09.2009 passed in MVOP No.1331 of 2008 by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-III Additional District Judge, Guntur. The appellant herein is the petitioner before the Tribunal.

2. Brief facts of the case are that on 15.07.2008, at about 9.00 PM, the petitioner was standing on the road margin near Srinivas Colony in Nallapadu village to cross the road. At that time, a Tavera Car bearing No.AP-5TT-1040 came at a high speed and dashed the petitioner. As a result of which, the petitioner fell down on the road and received fracture to left leg and injuries to head and all over the body. Immediately, the petitioner was admitted to Government General Hospital, Guntur. The petitioner took treatment as inpatient in the hospital for 30 days. Operation was performed and steel rod was inserted to his fracture. The petitioner suffered permanent disability and is not able to attend to his normal duties. Petitioner was working as Coolie and earning Rs.100/- per day. Alleging that the accident occurred due to rash and negligent driving by the driver of the Tavera car, the petitioner filed the claim petition claiming compensation of Rs.1,50,000/.

3. The 1st respondent-owner of the crime vehicle remained ex parte. The 2nd respondent-insurer filed written statement denying all the material averments made in the claim petition. The 2nd respondent further stated

in the written statement that the driver of the crime vehicle had no valid and effective driving licence at the time of accident and that the crime vehicle was not insured with the insurance company.

4. On behalf of the petitioner, PW1 was examined and Exs.A1 to A4 were marked. On behalf of the 2nd respondent, RWs.1 and 2 were examined and Exs.B1 to B5 and Ex.X1 were marked.

5. The Tribunal, on consideration of the evidence available on record, awarded compensation of Rs.60,000/-, payable by the 1st respondent-owner. The liability of the 2nd respondent was exonerated.

6. Aggrieved by the Judgment of the Tribunal, the appellant-claimant preferred this appeal inter alia contending that the Tribunal awarded inadequate compensation and that it ought to have ordered pay and recovery against the 2nd respondent-insurer; and that the rate of interest also need to be enhanced from 7.5% to 12% per annum.

7. Heard learned counsel for the appellant and the learned counsel for the 2nd respondent-insurer.

8. The points for consideration are

(i) Whether the appellant is entitled to enhancement of compensation and also enhancement of rate of interest from 7.5% per annum to 12% per annum?

(ii) Whether the appellant is entitled to the relief of pay and recovery against the 2nd respondent-insurer.

Point No.1:

9. The appellant-claimant is the injured in the motor vehicle accident. He filed the above OP claiming compensation of Rs.1,50,000/- on account of injuries sustained by him in the motor vehicle accident.

10. Learned counsel for the appellant-claimant submitted that the Tribunal, without considering the evidence on record, has exonerated the liability of the insurer and dismissed the claim against the insurer. It is contended that the Tribunal placed reliance on *Oriental Insurance Co. Ltd., v. Angad Kol and others*¹ and *The Divisional Manager, The New India Assurance Company Limited v. Vinayaga Moorthi and Ors.*² came to the conclusion that the driver of the crime vehicle did not possess valid and effective driving licence at the time of accident and therefore exonerated the liability of the insurer. The Tribunal held that there is violation of terms and conditions of policy, as such the liability of insurance company was exonerated.

11. The Tribunal, while deciding Issues 1 and 2 in the impugned judgment, at paragraph 8, observed as under:

“8.... The 2nd respondent examined RWs.1 & 2 contending that the driver of the car was not possessing valid driving licence. As per the evidence of RW2, the driver Ch. Kranthi Kumar was having LMV non transport driving licence. He is permitted to drive his own vehicle. As per Ex.B1, the policy issued to 1st respondent is for a passenger carrying commercial vehicle. That goes to show that the vehicle involved in the accident is a transport vehicle”.

¹ 2009 ACJ 1411

² (CMA (MD) Nos.33 to 154 of 2008 and MP No.1 of 2008)

12. In Angad Kol (1 supra), the Hon'ble Supreme Court ordered pay and recovery as the driver of the crime vehicle was not holding valid and effective licence for driving the crime vehicle. In New India Assurance Co. Ltd., v. Roshanben Rahemansha Fakir and another³, the Hon'ble Supreme Court ordered pay and recovery as the driver of the crime vehicle was not holding valid and effective driving licence to drive the goods vehicle.

13. In the instant case, the Tribunal has totally dismissed the claim against the 2nd respondent-insurer in view of violation of terms and conditions of insurance policy as the driver of crime vehicle was not possessing valid and effective driving licence by the date of accident.

14. The Tribunal though having referred to the decision rendered in the case of Angad Kol (1 supra) when there was an order of pay and recovery in cases of the driver of the crime vehicle not possessing valid and effective driving licence by the date of accident.

15. Even in the recent judgment of the apex Court in the case of Iyyapan v. United India Insurance Co. Ltd.⁴, it was clearly held that the driver holding a valid driving licence to drive light motor vehicle drives a commercial vehicle, he is deemed to have valid driving licence. It was observed in paragraphs 18 and 19 of the Iyyapan (4 supra) judgment, as under:

³ 2008 ACJ 2161

⁴ (2013) 7 SCC 62

“18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer’s right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

16. In the instant case, the crime vehicle was a Tavera car. It was meant for carrying passengers. The driver of the crime vehicle has obtained non-transport vehicle driving licence, and therefore, in the light of above decisions, this is a fit case where the insurance company can be directed to pay the compensation amount in the first instance and recover the same from the owner of the crime auto.

17. Coming to the injuries sustained by the petitioner, the petitioner received fracture injuries to his left leg and also injuries to his and all over the body. He has undergone operation to his leg and steel rods were inserted in his leg. He has been treated in the hospital as inpatient for 30 days. Ex.A2 is the certified copy of the wound certificate. As per Ex.A2, he sustained ten injuries, out of which he suffered fractures to both bones of left leg, and injury No.1 was having subdural haemorrhage. Injuries 1 and 7 are described as grievous injuries and the other injuries are simple in nature.

18. The Tribunal, based on the evidence on record, awarded an amount of Rs.30,000/- towards pain and suffering for two grievous injuries; Rs.20,000/- towards pain and suffering for eight simple injuries; Rs.2,000/- towards transportation; and Rs.3,000/- towards extra nourishment; and Rs.5,000/- towards attendant charges.

19. The appellant sought for enhancement of compensation on the ground that the amounts awarded by the Tribunal are not adequate and also not proportionate to the injuries suffered by the appellant and the treatment undergone by him.

20. In the case of Syed Sadiq v. United India Insurance Company⁵, which is a case of personal injuries, the apex Court has considered various Heads like (i) Pain and suffering, ii) medical and incidentals, iii) loss of amenities, iv) future medical expenses, and v) cost

⁵ I (2014) ACC 206 (SC)

of litigation. In the case of Raj Kumar v. Ajay Kumar and another⁶, the apex Court enunciated the principle for assessment of damages in case of personal injuries. In the case of Arvind Kumar Mishra v. New India Assurance Company Limited⁷, which is also a case of personal injuries, the apex Court has awarded compensation considering various Heads.

21. Keeping in view the rationale in the above decisions, the compensation awarded by the Tribunal is enhanced as shown in the tabular format below:

Head	Compensation awarded by the Tribunal	Compensation enhanced
Pain & suffering for two grievous injuries	Rs.30,000/-	Rs.50,000/-
Pain & suffering for eight simple injuries	Rs.20,000/-	Rs.40,000/-
Transportation charges	Rs.2,000/-	Rs.5,000/-
Extra nourishment	Rs.3,000/-	Rs.5,000/-
Attendant charges	Rs.5,000/-	Rs.5,000/-
Loss of earnings for two months	--	Rs.6,000/- (@Rs.3,000/- PM)
Total	Rs.60,000/-	Rs.1,11,000/-

22. The appellant requested for enhancement of rate of interest from 7.5% to 12%. In view of the decision of the Hon'ble Supreme Court in Reshma Kumari and others v. Madan Mohan and another⁸, the appropriate rate of interest in the present case is 7.5%, and therefore, I do not see any ground to increase rate of interest.

⁶ 2011 ACJ 1

⁷ (2010) 10 SCC 254

⁸ 2013 ACJ 1253

23. In the result, the appeal is allowed in part, directing the 2nd respondent-insurer to deposit the compensation amount of Rs.1,11,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation, in the first instance, within two months from the date of receipt of a copy of this order, and thereafter recover the same from the 1st respondent-owner of the crime vehicle, as per the procedure laid down in National Insurance Co. Ltd. v. Chella Bharathamma and others⁹. On such deposit, the appellant is permitted to withdraw the entire amount.

No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

30th March, 2017

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⁹ AIR 2004 SC 4882

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