

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.1554 of 2012

JUDGMENT:

The present appeal is preferred by the 2nd respondent – United India Insurance Company Ltd., against the order and decree dated 31.01.2012 in MV OP No.333 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal cum VI Additional District Judge, Tirupati granting compensation of Rs.1,80,000/- with interest at 8%p.a. from the date of petition, till the date of realization.

2. The appellant herein is the 2nd respondent, the 1st respondent herein is the claim-petitioner, the 2nd respondent herein is the owner of TVS Scooter bearing No.AP 03 M 5453, in the original petition. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The facts, in brief, are that, on 22.07.2006 at about 5 p.m. when the petitioner was going on cycle near Lavanya Apartments, TUDA Lay Out, Tirupati, the 1st respondent, who is owner cum rider, drove the TVS Scooty in a rash and negligent manner and dashed against the cyclist, as a result, the petitioner sustained injuries to his leg; immediately, he was shifted to SVRR GG Hospital, Tirupati for treatment, where he underwent surgery and spent more than Rs.25,000/- for treatment; a case in Cr.No.92 of 2006 was registered against the 1st respondent; the petitioner was hale and healthy prior to the accident, aged about 42 years, a photographer by profession and was earning Rs.5000/- per month and hence, he claimed a sum of Rs.2,00,000/- as compensation; the 1st respondent is the owner and the

2nd respondent is the insurer and hence, both the respondents are jointly and severally liable to pay the compensation.

4. The respondents 1 and 2 filed separate counters denying the material allegations of the petition and contended that the petitioner suddenly crossed the road and lost control over the cycle, as a result of which the accident occurred.

5. Basing on the said pleadings, the Tribunal has framed three issues. During enquiry, on behalf of the petitioner, PWs.1 to 3 were examined and Exs.A.1 to A.4 and Ex.X.1 was marked. No oral or documentary evidence has been adduced on behalf of the respondents.

6. The Tribunal, basing on Exs.A.1 and A.2, FIR and charge sheet, recorded a finding on issue No.1 that the accident occurred due to rash and negligent driving of the 1st respondent; on issue No.2, the Tribunal held that the petitioner is entitled for a total compensation of Rs.1,80,000/- with interest at 8%~~per~~ annum from the date of petition, till the date of realization; and on issue No.3, Tribunal held that the respondents are liable to pay the compensation to the petitioner. Aggrieved by the same, the present appeal is filed by the insurer.

7. Heard Smt. A. Jayanthi, learned counsel for the appellant and Sri T.C. Krishnan, learned counsel for the 1st respondent. None appears for the 2nd respondent (owner of the vehicle), though served with notice. Perused the record.

8. Learned counsel for the appellant does not seriously dispute that the accident occurred due to rash and negligent driving of the 1st respondent. However, the contents of Exs.A.1 FIR and A.2 charge sheet show that the police registered a case against the 1st respondent and

was charge sheeted before the criminal Court for the offence under Section 338 of IPC and there is no contradicting evidence adduced by the respondents to prove that there was contributory negligence on the part of the petitioner. Hence, I am of the view that the Tribunal has rightly held that the accident occurred due to rash and negligent driving of the 1st respondent. Coming to issue No.2, the Tribunal awarded a sum of Rs.1000/- towards transport charges, Rs.1000/- towards damage to clothing; Rs.30,000/- towards medical expenses, Rs.6000/- towards pain and mental agony, Rs.10,000/- towards restriction/uncomfortable of movements due to fracture to the femur joint; Rs.9,000/- towards fracture to left femur, Rs.15,000/- towards operations when the nail got infected and Rs.1,08,000/- towards loss of earning capacity on account of 20%disability, in all Rs.1,80,000/- as compensation.

9. As per Ex.X.1 discharge summary, the petitioner under gone two surgeries for the two fracture injuries and he was admitted in the hospital on 22.06.2006 and discharged on 02.07.2008. The petitioner filed the Ex.A.3-wound certificate, Ex.A.4-permanent disability certificate issued by the Regional Medical Board, SVRR GG Hospital, Tirupati and Ex.X.1 discharge summary to prove that he suffered two fracture injuries and on account of it, he sustained 20% permanent disability. To prove the same, the petitioner examined the doctor-PW.2, who issued disability certificate. According to PW.2, on examination, he observed a healed fracture of left hip joint and there was subsistence of stiffness of his left joint with reduction of movements, abduction of external and internal rotation and reduction of flexion etc. and basing on the same, he assessed the disability at 40% on the date of the certificate on 04.03.2009. When PW.2 examined the petitioner on the date of evidence i.e., on 22.09.2011, he observed that there was a little

improvement in the movement of hip joint and there was a limp due to the weakness of abductor muscles of left hip joint and he assessed the present disability at 20%. The evidence of PW.2 in respect of disability cannot be disputed, because the evidence of another doctor-PW.3, who initially treated the petitioner and fixed the nail, has stated that on two occasions he performed surgeries for the fracture injuries sustained by the petitioner in the accident. The petitioner was in the hospital for more than 15 days and underwent two surgeries and he must have spent some amounts towards transport charges, medical expenses and other incidental expenses. On account of the disability, the petitioner, being a photographer, cannot do his work as earlier and definitely there is loss of earning capacity on account of the disability, which is permanent and he has to suffer for the entire life. At the time of accident, the petitioner was aged about 42 years. The evidence of PWs.2 and 3 the doctors, who issued disability certificate and treated the petitioner, coupled with contents of wound certificate-Ex.A.3, disability certificate-Ex.A.4 and discharge summary-Ex.X.1, it can be said that on account of fracture injuries sustained by the petitioner in the accident, there is restriction of movements in the legs and he cannot do his work as earlier. The petitioner has established that he sustained 20% disability on account of the injuries sustained by him in the accident, by examining PWs.2 and 3, who issued disability certificate and who treated him during hospitalization. The Tribunal after taking the income of the petitioner at Rs.36,000/- per annum, as he being the photographer by profession and applying the relevant multiplier 15, as the petitioner was aged 42 years at the time of accident, estimated the loss of earnings of the petitioner on account of 20% disability at Rs.1,08,000/-, apart from awarding a sum of Rs.72,000/- under other

heads as detailed in the award for the fracture injuries sustained by him in the accident, in all granted a sum of Rs.1,80,000/- with interest at 8% p.a. In view of the facts and circumstances of the case, I find no reason to interfere with the impugned order of the Tribunal.

10. For the reasons stated above, the appeal is devoid of merit and the same is accordingly dismissed. No order as to costs. Pending miscellaneous petitions, if any, in this appeal, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 12.10.2018
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