

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.NO.1066 OF 2009

JUDGMENT:

This appeal is arising out of order and decree, dated 28.11.2008 in O.P.No.947 of 2006 on the file of the Motor Accident Claims Tribunal-cum-I Addl. District Judge, at Nalgonda.

2. Appellant, who is the petitioner filed the claim petition under Sections 163-A, 166 r/w 140 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,00,000/- on account of the injuries sustained by him in the motor vehicle accident that occurred on 03.09.2006 while he was travelling in an Auto bearing No. AP-24-AD/TR 5593 from Keshya Thanda to Konda Mallepalli. According to him, the accident occurred due to rash and negligent driving of the driver of the auto, which resulted in the accident. The petitioner received grievous injuries in the accident. Therefore, he claimed compensation of Rs.1,00,000/- under various heads against the respondent Nos. 1 and 2, who are the owner and insurer of the crime vehicle.

3. Respondent No.1 remained ex parte and the respondent No.2 filed counter denying the averments made in the petition and also denying the liability and the quantum of compensation claimed by the petitioner as excessive.

4. Additional counter was also filed contending that as on the date of the accident, the crime vehicle was not insured with the respondent No.2-company.

5. The Tribunal on consideration of pleadings, has framed three issues with regard to rash and negligent act on

the part of the driver of the auto and about the quantum of compensation entitled by the claimant and the liability.

6. On consideration of evidence of P.W.1 and documents Exs.A1 to A4 and evidence of R.W.1 and documents Exs.B1 to B6, the Tribunal allowed the claim petition partly awarding compensation of Rs.37,500/- with proportionate costs and interest at 7.5% p.a. holding that the respondent No.1 is liable and dismissing the claim against the respondent No.2.

7. Aggrieved by the impugned order, this appeal has been preferred for enhancement of compensation and also to set aside the finding of the Tribunal exonerating the liability of the respondent No.2-Insurance Company.

8. Heard the arguments of the learned counsel for the appellant and standing counsel for respondent No.2-ICICI Lombard General Insurance Company Ltd.,

9. Learned counsel for the appellant submits that by the date of accident, there was coverage of insurance policy. There was a cover note and as per the cover note, the policy was in force.

10. Learned standing counsel for the respondent No.2 submits that no cover note has been produced by the appellant either before the trial Court or before this Court. The respondent No.2 has got issued a notice Ex.B5 to the respondent No.1, owner of the crime vehicle asking him to produce cover note No.TPCVD 3235865. Ex.B6 is the acknowledgement showing the receipt of notice by respondent No.1. It is argued that in spite of issuance of notice Ex.B5 and the acknowledgement Ex.B6, cover note

has not been produced by the respondent No.1. Therefore, there is no cover note as contended by the appellant.

11. As a matter of fact, the burden is on the appellant to prove that there is cover note issued by the Insurance Company calling the liability of the insurer. The respondent No.2-company has taken steps for production of the cover note by giving a notice to the respondent No.1, vide Ex.B5-notice. The notice has been acknowledged by the respondent No.1. But, cover note has not been produced. Therefore, as far as Insurance Company is concerned, there is no liability as there is no coverage of policy by the date of accident. Admittedly, the insurance policy was in force from 19.09.2006 to 18.09.2007. When the accident occurred on 03.09.2006, there was no coverage of risk. Therefore, there is no force in the contention raised by the learned counsel for the appellant that there was a policy in force by way of cover note. Since the cover note has not been produced, the appellant has failed to prove that there was policy covering the risk of the appellant by the date of cover note.

12. Learned counsel for the appellant contended that the quantum of compensation awarded by the Tribunal is inadequate. The Tribunal had taken the income of the appellant as Rs.1,500/- per month and awarded Rs.4,500/- towards loss of earnings for three months due to the injuries sustained by the appellant. In fact, the appellant has suffered two fractures and abrasions. The Tribunal has no doubt, taken into consideration the notional income as Rs.1,500/- per month. In the light of the judgments of the Hon'ble Apex Court in many cases, notional income of a labourer working in an unorganized sector can be taken as Rs.3,000/- per month. Therefore, taking the notional income

at Rs.3,000/- per month for three months, the appellant is entitled for Rs.9,000/- towards loss of earnings.

13. The Tribunal has awarded Rs.3,000/- towards medical expenses, transport and extra nourishment without considering the medical bills, Ex.A4 produced by the appellant for a sum of Rs.5,298/-. Ex.A4-bunch of medical bills and prescriptions are evident that the appellant is entitled for a sum of Rs.5,298/-. The reasons stated by the Tribunal in not considering that amount cannot be accepted, on the ground that no one was examined to prove those bills, Tribunal has arbitrarily awarded a sum of Rs.3,000/- under the above head. Therefore, the claimant is entitled for Rs.5,298/- towards medical bills, and Rs.3,000/- towards transport and extra nourishment. Since he has suffered two grievous injuries and two simple injuries, the compensation awarded by the Tribunal is enhanced as detailed in the following tabular form.

Heads	Compensation awarded by the Tribunal	Compensation enhanced
1. Two grievous & two simple injuries	Rs.30,000/-	Rs.40,000/-
2. Medical bills, attendant charges, transport & extra nourishment	Rs.3,000/-	Rs.3,000/- + Rs.5,298/-
3. Loss of earnings for three months	Rs.1,500/- x 3 = Rs.4,500/-	Rs.9,000/- @ Rs.3,000/- per month
Total	Rs.37,500/-	Rs.57,298/-

14. In the result, the appeal is partly allowed enhancing the compensation from Rs.37,500/- to Rs.57,298/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till the date of realization against the respondent No.1. The dismissal of the claim against the respondent No.2 by the Tribunal is confirmed. Miscellaneous petitions, if any pending in this appeal shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 29-06-2018

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