THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.2536 OF 2006
And
CROSS-OBJECTIONS (SR) No.59172 of 2016

COMMON JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the Insurance Company/respondent No.3 challenging the judgment and award, dated 31.07.2006 passed in O.P.No.470 of 2004 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal (I Additional District Judge) at Warangal (for short, 'the Tribunal').

The first respondent/petitioner filed cross-objections being not satisfied with the quantum of compensation awarded in her favour.

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 08.04.2003 the petitioner along with others boarded the auto bearing No.AP 36 V 5253 at Parvathagiri cross roads to go to Nekkonda Village. When the auto reached near Saireddipally Village, the driver of the auto had driven the same in a rash and negligent manner, due to which, the auto turned turtle. The accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 36 V 5253 against whom, the Station House Officer, Nekkonda Police Station, registered a case in Crime No.36 of 2003 for the offence punishable under Section 337 I.P.C. After completion of the investigation, the investigating officer laid charge sheet against the driver of the crime vehicle for the offences punishable under Sections 337 and 338 I.P.C. Due to accident, the petitioner sustained injuries on the head and other parts of the body. The petitioner lost one teeth. The petitioner took treatment as inpatient in M.G.M. Hospital, Warangal, and spent an amount of Rs.10,000/- towards medicines and treatment. Due to injuries, the petitioner could not attend her work for long time. At the time of accident, the petitioner was earning an amount of Rs.2,500/- per month by attending coolie work. The auto bearing No.AP 36 V 5253, which belongs to the first respondent, was insured with the third respondent company. The second respondent is the Branch Manager of the third respondent company. Therefore respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.50,000/- with interest at the rate of 18% per annum from the date of petition till the date of realisation to the petitioner.

4. Respondent Nos.1 and 2 remained *ex parte.* The third respondent filed counter denying all the averments made in the petition *inter alia* contending that there was no negligence on the part of the driver of the auto bearing No.AP 36 V 5253 to cause the accident. The concerned police did not inform about the factum of accident to this respondent by colluding with the petitioner. This respondent is not liable to pay compensation to the petitioner unless the driver of the auto was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioner is highly excessive and exorbitant. The first respondent had violated the terms and conditions of policy by

permitting ‘7’ persons to travel in the auto. Hence, the petition may be dismissed against this respondent.

5. Basing on the above pleadings, the Tribunal framed the following issues:

(1) Whether the accident took place on account of the rash and negligent driving of the auto bearing No.AP 36 V 5253 by its driver or due to circumstances beyond his control?

(2) Whether the petitioner is entitled to receive any compensation? If so, to what amount and from whom?

(3) To what relief?

6. During the course of enquiry, on behalf of the petitioner, P.W.1 was examined and Exs.A.1 to A.6 were marked. On behalf of the third respondent, no oral evidence was adduced and Ex.B.1 policy was marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 36 V 5253, which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.30,000/- in favour of petitioner with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation.

8. Feeling aggrieved by the judgment and award of the Tribunal, the third respondent insurance company preferred the present appeal. The claimant being not satisfied with the quantum of compensation awarded by the Tribunal filed cross-objections.

9. Learned counsel for the appellant-third respondent submitted that the Tribunal failed to consider that the first respondent had violated the terms and conditions of the policy by permitting ‘7’ persons to travel in the auto even though the capacity of the auto is ‘3’. She further submitted that the Tribunal without considering the material available on record granted compensation of Rs.30,000/- to the petitioner, which is on higher side. She also submitted that the first respondent had violated the terms and conditions of the policy; therefore, the third respondent is not liable to pay compensation to the petitioner.

10. Learned counsel for the first respondent/cross-objector submitted that the Tribunal has not awarded just and reasonable compensation to the petitioner; therefore, it is a fit case to enhance the compensation. He further submitted that the finding of the Tribunal that the first respondent had not violated the terms and conditions of the policy is supported by oral and documentary evidence.

11. Now the points that arise for consideration in this appeal are:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 36 V 5253? and
2. Whether the compensation awarded by the Tribunal is on higher side?

POINT No.1:

12. As seen from the testimony of PW.1, on the date of accident, she boarded the auto at Parvathagiri Cross Roads to go to Nekkonda Village. When the auto reached near Saireddipally

Village, the driver of the auto bearing No.AP 36 V 5253 had driven the same in a rash and negligent manner, due to which, the auto turned turtle. If the testimony of PW.1 is taken into consideration, the accident occurred due to the rash and negligent driving of the driver of the auto. Apart from PW.1, the driver of the auto is the competent person to speak about the manner of the accident. For one reason or other, the respondents did not choose to examine the driver of the auto or any other eye witness to the accident to negate the contention of the petitioner. PW.1 is an injured witness whose testimony cannot be discarded on flimsy grounds. It is not the case of the respondents that at the time of accident the petitioner was not travelling in the auto. As per the recitals of Ex.A.1 F.I.R. and Ex.A.2 charge sheet, the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 36 V 5253. The oral testimony of PW.1 is supported by the recitals of Exs.A.1 and A.2. The Tribunal considered the oral and documentary evidence available on record in right perspective and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto. The Tribunal has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the Tribunal. Hence, this point is answered in favour of the petitioner and against the respondents.

POINT No.2:

13. As seen from the testimony of PW.1, due to accident, she lost one teeth and sustained injuries on various parts of the body. A perusal of Ex.A.3 reveals that the petitioner lost one tooth and sustained two simple injuries on the skull. Due to loss of tooth

and injuries to scull, the petitioner might have suffered a lot. Taking into consideration the material available on record, the Tribunal awarded an amount of Rs.20,000/- towards pain and suffering. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the appellant-third respondent that the amount of compensation awarded under this head is on higher side. The Tribunal also granted an amount of Rs.10,000/- towards probable expenditure for future treatment. It is a known fact that the petitioner has to take appropriate steps for fixing of artificial tooth. The petitioner has to spend some amount for fixation of artificial tooth. Taking into consideration the plight of the petitioner, the Tribunal awarded an amount of Rs.10,000/- towards future medical expenses. Taking into consideration the nature of injuries sustained by the petitioner, I am of the considered view that granting of an amount of Rs.10,000/- towards probable medical expenditure is just and reasonable. The petitioner has not filed any document to prove that she lost her earnings. There are no grounds much less valid grounds to enhance the compensation. Hence, the cross-objections are liable to be dismissed. Therefore, the compensation awarded by the Tribunal is just and reasonable to meet the ends of justice. There is no mention in Exs.A.1 and A.2 that the accident occurred due to overload. Mere travelling of more passengers than the seating capacity by itself would not amount to violation of terms and conditions of Ex.B.1 policy. Absolutely, there is no material on record to establish that the first respondent had violated terms and conditions of policy.

14. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of learned counsel for the third respondent that the first respondent had violated the terms and conditions of policy. Hence, the third respondent has to indemnify the liability of the first respondent in view of terms and conditions of Ex.B.1 policy.

15. In the result, the Appeal and the Cross-objections are dismissed. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 03.04.2018
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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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