THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.621 OF 2011

JUDGMENT:

Appellant-claimant filed this appeal against the award and decree dated 08.11.2010 passed in M.V.O.P.No.87 of 2006 by the VIII Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal (FTC), Chittoor, dismissing the claim of the appellant under Section 163 (a) of the Motor Vehicles Act for a sum of Rs.2 lakhs on account of the injuries sustained by him in the motor accident that took place on 27.05.2005.

The appellant filed claim petition under Section 163 (a) of the Motor Vehicles Act alleging that on 27.05.2005 at about 5.45 p.m. when he was returning from Chittoor to Palamaner on his motor cycle bearing No.AP-03-H-2139 along with one B.Venkatesh, as pillion rider, at that time a white coloured Tata Sumo came in their opposite direction in rash and negligent manner. By suspecting danger, the appellant immediately took his motor cycle to the extreme left side of the road and as there was height in the mud road, he lost control over the motor cycle and dashed to culvert No.182/3 near Balijapalle Village on Chittoor-Palamaner road Bangarupalyam Mandal, due to which, the appellant and the pillion rider both fell on the road and sustained injuries. Immediately, the appellant was shifted to Government Hospital, Bangarupalyam, and from there he was shifted to CMC Hospital, Vellore, where he was treated as inpatient for 12 days for the six injuries sustained by him. A case in crime No.65/2005 for the offence under Section 337 IPC was registered by the Station House

Officer, Bangarupalyam Police Station, against the appellant alleging that the appellant himself was the owner of the motor cycle, he got valid driving license, his motor cycle was insured with the respondent Company, the accident occurred due to the rash and negligent driving of the unknown vehicle i.e. white coloured Tata Sumo. Claiming that the appellant incurred Rs.50,000/- towards medical expenses, he was unable to attend his agricultural works, lost his entire income from the medical business and his old aged parents, wife and children are depending on him, he filed claim petition seeking compensation of Rs.2 lakhs under various heads.

The respondent-Insurance Company filed a counter affidavit denying the averments of the claim petition. The Insurance Company specifically averred that the appellant himself was the owner of the motor cycle bearing No.AP-03-H-2139 and the accident occurred due to the fault of the appellant only. Hence, he cannot claim any compensation and the Insurance Company was liable to pay compensation only to any third party victim, as per the Insurance policy. The respondent-Insurance Company has to indemnify the insured only in case if he is liable to pay any compensation to any third party victim. It is further averred that the claim was highly excessive, rate of interest claimed was also excessive and there are no merits in the petition and thereby prayed to dismiss the claim petition.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

(1) Whether the accident in question was caused due to the rash and negligent driving of the petitioner himself while riding the motor cycle bearing No.AP-03-H-2139?

(2) Whether the petitioner is entitled to any compensation? If so, to what quantum?

On behalf of the appellant, PWs 1 and 2 were examined and Exs.A.1 to A.7 were got marked. On behalf of the Insurance Company, no oral evidence was adduced, however, Ex.B.1 copy of Insurance Policy was got marked.

On consideration of evidence of PWs 1 and 2 and Exs.A.1, A.2 and A.6 the Tribunal came to the conclusion that the appellant himself drove the motor cycle in high speed, negligent manner and dashed his motor cycle to the road side culvert, due to which the motor cycle dragged to a distance of 30 feet and he sustained multiple injuries. Police after investigation filed charge sheet under Ex.A.2 stating that the accident occurred due to the rash and negligent driving of the appellant. In FIR there was no mention about white coloured Tata Sumo coming in opposite direction in high speed, due to which the appellant was stated to have lost control over his motor cycle. The Insurance Company specifically pleaded that the Tata Sumo was introduced by the appellant only in the claim petition for the first time. The appellant, who was examined as P.W.1, in his cross examination, had admitted that the contents of the FIR are true, which shows that the appellant was at fault. Based on above conclusions, the Tribunal decided issue No.1 against the petitioner.

The Tribunal further observed that the evidence of PW.2, the Medical Officer, who treated the appellant at Community Health

Centre, Bangarupalyam, immediately after the accident, reveals that on 27.05.2005, he examined PW.1 and found lacerated injury of 2 X 1 cm on left big toe and found the appellant in coma stage. Hence, he was shifted to higher institution for further management. The appellant claimed that he spent Rs.50,000/- towards medical expenses and he filed Ex.A.7-medical bills and got examined P.W.2, but Ex.A.7 medical bills reveal that the appellant had incurred only Rs.17,912-90 p.s. towards medical expenses but the appellant has calculated the medical expenses at Rs.28,335/-. Ex.A-7 consists of 32 medical bills. After perusal of those bills, the Tribunal held that the appellant has made double claim in the medical bills and thereby concluded that the appellant had incurred only Rs.17,912-90 ps towards medical expenses. Further, the Tribunal held that all the decisions relied by the appellant were not relevant to the present case as they are related to third party claim. Thus, finally, the Tribunal dismissed the claim petition on the ground that the accident was occurred due to the rash and negligent driving of the appellant himself. Aggrieved by the same, the present appeal came to be filed.

Sri Y.Ramatheertha, learned counsel for the appellant, would contend that the Tribunal failed to see that the claim petition is filed under Section 163 (a) of the MV Act and the claimant need not to prove rash and negligent driving of the vehicle. He would further contend that the Tribunal failed to consider Ex.B.1 Policy in its proper perspective as the appellant-insured paid separate premium policy under the head of 'compulsory PA to owner-cum-driver'. The Tribunal simply brushed aside the judgements cited by the appellant's counsel holding that they all relate to third party claims. The Tribunal ought to have granted compensation claimed in the claim petition as the policy under Ex.B.1 covers 'compulsory PA to owner-cum-driver'.

Per contra, Sri Sambashiva Rao, learned counsel for the respondent-Insurance Company, would contend that the appellant filed claim petition under Section 163 (a) of the M.V.Act; the appellant has driven the motor cycle in rash and negligent manner; he himself is the tort feaser; and claim is not maintainable against the Insurance Company as Ex.B.1 does not cover the risk of the owner of the vehicle. Section 147 of the MV Act does not require an Insurance Company to assume risk of death or bodily injury to the owner of vehicle and no additional premium was paid to cover this risk, for which, he relied on the decisions in ***S.Chenchulakshmi and another vs. New India Assurance Co. Ltd.,***[1] ***United India Insurance Co. Ltd., vs. Puligunda Vani Krishna and another***[2], ***Oriental Insurance Co. Ltd., vs. Jhuma Saha and others***[3] wherein it was held that the owner is not entitled for any compensation for his own damages in the absence of specific coverage by the policy. It covers the risk of the third party only. Hence, the Insurance Company is not liable to pay any compensation to the appellant and the Tribunal rightly dismissed the claim petition.

Having heard the learned counsel for the parties and perused the record including the Exhibits marked in this case, it is

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[1] 2009 ACJ 2835
[2] 2010 ACJ 2473
[3] 2007 ACJ 818

found that Ex.B.1 Insurance policy covers the risk of the owner and paid driver of the offending vehicle as the appellant paid premium for separate policy under the head 'compulsory PA to owner-cum-driver'. When the additional premium in respect of such personal injury has been paid by way of special insurance contract covering the personal accident of the owner, the rejection of the claim by the Tribunal holding that the appellant is not entitled for any compensation under Section 147 (1) (b) of the M.V. Act and the Insurance Company is only liable to pay the compensation to third parties, is perverse and contrary to law and evidence available on record. This Court finds that the appellant is entitled for compensation as Ex.B.1 Policy which covers the risk of the owner-cum-driver. When the claim is filed under Section 163 (a) of the M.V.Act, this Court at this length of time feels that the matter could not be remanded to the Tribunal for determination of quantum of compensation payable to the appellant-claimant. The appellant filed claim petition claiming Rs.2 lakhs for the injuries sustained by him in the accident in question. But, the Tribunal while dealing with issue No.2 *viz.* whether the petitioner is entitled for compensation if so to what quantum, had came to the conclusion that the appellant had incurred only Rs.17,912-90 p.s. as per Ex.A.7-medical bills though he claimed Rs.50,000/- towards medical expenses. As seen from the record, the appellant sustained six injuries *viz.,* (a) Traumatic Diffuse Brain injury (b) Fractures-left big toe distal phalanx (c) A mild paucity of movements in the right upper and lower limb (d) There was a small contusion in the anterior thalamic region on the right (e) Laceration on the left hand wrist and (f) injury on the main finger of the left hand. It is also found that the appellant was treated as in-patient for twelve days in CMC Hospital, Vellore. Hence, it would be just and proper to grant a lump sum amount of Rs.50,000/- towards pain and suffering, extra nourishment, transport charges and loss of income, etc. That apart, as held by the Tribunal, the appellant is also entitled for a sum of Rs.17,912-90 ps towards medical expenses and the finding of the Tribunal in this regard needs no interference. Thus, in total the appellant is entitled for Rs.67,912-90 ps towards compensation.

Accordingly, the appeal is allowed in part granting compensation of Rs.67,912-90 p.s. to the appellant-claimant payable by the respondent along with proportionate costs and interest @ 7.5% per annum from the date of filing of the petition till the date of realization. The respondent-Insurance Company shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellant is at liberty to withdraw the same.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

23rd November, 2018
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