

HONOURABLE MS JUSTICE J.UMA DEVI

M.A.C.M.A.No.2207 OF 2009

ORDER:

The order passed in O.P.No.1963 of 2002 on the file of Motor Accident Claims Tribunal-cum- III Additional District and Sessions Judge, (Fast Track Court) Nizamabad is assailed by the claimant- P.Sudhakar Reddy ventilating his main grievance that the compensation amount of Rs.27,500/- awarded to him in respect of injuries received by him in the accident dated 20-9-2002 is very low and meager.

Second respondent in O.P.No.1963 of 2002 had not contested the case despite the service of notice on it. The owner of the offending scooter also did not choose to contest the case though notices were served on him.

The facts which are relevant for disposal of the appeal are briefly stated as under:

The appellant/claimant claimed that he was a resident of Bardipur village of Nizamabad District. He was eking out his livelihood through cultivation and also by doing vegetable business. His case was that on 20th September, 2002 while he was proceeding on a motor cycle bearing No.AP.25.H.794 as a pillion rider from Dichpally to Nizamabad, it was driven by the 1st respondent herein in a rash and negligent manner with a high speed when he reached near Dharmaram near bridge, and as the result of it, it was hit to

road side stones, and that she received multiple grievous injuries. The Police of Dichipally registered a case in Cr.No.182 of 2002 under Section 338 of I.P.C. against the rider of the motor cycle.

In the above said accident, the claimant/appellant sustained fracture to the left foot bones, both bones of left leg knee, apart from injuries over the skull and other parts of the body. Soon after the accident, he was taken to Sai Tirumala Hospital, where Dr.Bhupathi Reddy and other team of doctors attended on him. His left leg was operated twice and rod was inserted. Even after his discharge from the said hospital, he continued treatment and incurred expenditure of Rs.1,50,000/- towards treatment. It was further stated by him that he could not attend to the work of cultivation during the time of his hospitalization and at present, he is also not in a position to move because of fracture injury received to his left leg.

The petitioner-claimant laid claim against the owner and insurer of the motor cycle bearing No.AP.25.H.794 for a sum of Rs.3,00,000/-. The Tribunal, on appreciation of oral and documentary evidence, awarded compensation of Rs.27,500/- while exonerating the Insurance Company from its liability to pay compensation.

Having been aggrieved that order passed by the III Additional District and Sessions Judge, Nizamabad awarding compensation of Rs.27,500/- in respect of the grievous injuries sustained by the

claimant to his left leg for which he took treatment in the hospital of P.W.2 by incurring the expenditure of Rs.1,50,000/- he preferred this appeal seeking enhancement of compensation.

The main contention of the appellant is that the trial court, without proper appreciation of evidence given by P.W.2 in whose hospital, he took treatment as inpatient for a period of one week, awarded meager compensation of Rs.27,500/- for which no valid reasons were assigned by the tribunal. It was also the contention of the appellant that the court below did not give valid reasons to discard the testimony of P.W.2 Dr.Bhupathi Reddy, who during the course of his examination, deposed in clear terms that the claimant/appellant was admitted in hospital on 20th September, 2002 to take treatment for a lacerated injury sustained by him to his left leg measuring 2" x 5" and that he conducted operation on 21-9-2002 for the injury. The case sheet Ex.A.8 and the cash bill Ex.A.5 were simply ignored by the court below without assigning any valid reasons. Though the plea of the claimant was established how he received a grievous injury to his left foot, and heavy expenditure was incurred by him towards treatment etc., the same was not appreciated by the tribunal in a proper perspective. Due to improper appreciation of evidence on record, serious miscarriage of justice was occurred and the same is required to be rectified by this court on reappraisal of evidence on record. This Court being an

appellate authority got ample powers to reappraise the evidence on record.

Respondents seems to have raised the contention before the trial court that no additional premium is paid covering the risk of pillion rider, and hence, his plea of defence is to exonerate it from payment of compensation.

The trial court having regard to the above mentioned contention raised by the second respondent, for which it relied on various other case laws exonerated it from paying compensation. But, in view of the changed circumstances, viz. the circular issued by the Head Office of National Insurance Company dated 16-11-2009, accepting its liability in respect of occupancy of a private car, and the pillion rider of two wheeler under standard motor package policy, this court has no hesitation to fasten the liability against the 2nd respondent-insurance Company from whom, the owner of the two wheeler obtained a comprehensive policy.

The tribunal seems to have relied on a decision reported in *UNITED INDIA INSURANCE COMPANY LIMITED V. TILAK SINGH AND OTHERS* (¹) to exonerate the Insurance company from paying the compensation.

¹ 2006 (3) ALD 75 (SC)

Counsel appearing for the claimant/appellant has placed reliance on a decision reported in *SOHEL SARDAR KHAN v. S. RAMA PATHI RAO AND ANOTHER* ⁽²⁾ to fortify his contention that Insurance Company can be held liable to pay compensation to the claimants in view of the circular issued by the Head Office dated 16-11-2009 wherein it is clarified that the risk of the occupants of private car and pillion rider of the two wheeler is covered by “motor package policy.”

In the case law referred above, the Division Bench of this court by giving due regard to the representation made by the learned Standing counsel appearing for the National Insurance Company who admitted the liability of the Insurance Company in view of the circular issued by the Head Office dated 16-11-2009 accepting the liability of Insurance Company in respect of occupants of private car and pillion rider of two wheeler, ordered for payment of compensation to the claimant therein by the National Insurance Company.

The two wheeler involved in the accident was having valid subsisting Insurance Policy with the 2nd respondent at the relevant points of time.

² 2012 (1) ALT 812 (D.B.)

The decision rendered in the case law cited above, squarely applies to the case on hand as the vehicle involved in the accident was insured with the National Insurance Company (2nd Respondent) and that policy obtained from it was in force by the date of accident.

So far as the contention raised by the appellant/claimant disputing the quantum of compensation awarded by the tribunal is concerned, the appellant got examined P.W.2 Doctor Bhupathi .Reddy under whose care and supervision he took treatment for a period of one week.

The evidence given by P.W.2 would clinchingly establish the fact that the appellant/claimant sustained deep lacerated wound to his left foot measuring 2" x 5" for which he underwent surgery on the next day of his admission in the hospital of P.W.2, and was treated as inpatient for a period of one week. The case sheet, pertaining to the appellant was marked as Ex.A.8. The cash bill issued in respect of the amount incurred by him towards treatment was also marked as Ex.A.5.

Having regard to the nature of injuries sustained by the claimant/appellant, for which he took treatment for a period of one week, the tribunal ought to have awarded Rs.50,000/- compensation under all heads instead of Rs.27,500/-.

In the light of my above mentioned discussion, the appeal filed by the appellant/claimant deserves to be allowed in part by

enhancing compensation amount to Rs.50,000/- from Rs.27,500/-.
The enhanced compensation amount carries interest at the rate of 7.5% p.a., and the same is payable by R.1 and R.2 who are the owner and insurer of the offending Motor Cycle.

Accordingly, this appeal is allowed in part.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dated -3-2018.

Dvs



JUSTICE J.UMA DEVI

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Dvs