

HON' BLE SRI JUSTICE T. AMARNATH GOUD

M.A.C.M.A. No. 1946 of 2015

JUDGMENT:-

This appeal is preferred by the appellant - Insurance Company aggrieved by the Order and Decree dated 21.08.2009 in M.V.O.P.No.191 of 2006 passed by the Motor Vehicles Accident Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Kadapa at Rajampet (for short, "the Tribunal").

2. The brief facts of the case are that on 19.11.2003, at about 09:00 p.m., when the claimant and his family members were waiting for a bus to go to Kadapa at Rajampet, he found one Maruthi Van bearing No. AP04 F 8923 belonging to the 1st respondent, and since he is known to him, the claimant and his family were allowed to travel in the Maruthi Van. When the Van reached Kanumalaopalli at about 10:30 p.m., the driver of the Van drove it in a rash and negligent manner at high speed and dashed against a lorry which was coming in opposite direction, due to which, the claimant's wife succumbed to injuries and the claimant suffered permanent disability. Hence, he filed a petition before the Tribunal claiming compensation of Rs.4,00,000/- for the injuries sustained by him against respondents Nos.1 and 2, the owner and the insurer of the aforesaid lorry.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 - Insurance Company filed counter denying the averments of the claim petition and contended that as per the terms and conditions of the insurance policy, the Maruthi Van has to be privately used i.e. for own use of the owner and the driver of the Van has to possess valid and effective driving licence at the time of the accident, otherwise, the 2nd respondent – Insurance company is not liable to indemnify the first respondent, the owner of the vehicle. The 1st respondent violated the terms and conditions of the insurance policy. The amount of compensation pleaded by the claimant is highly excessive, as such, the claim petition is liable to be dismissed.

4. After considering the evidence produced by the parties, the Tribunal granted a total compensation of Rs.1,78,800/- with interest at 7.5%p.a. Being aggrieved by the said order, the present appeal is preferred by the Insurance Company.

5. Sri Kota Subba Rao, learned Standing Counsel for the Insurance Company, has contended that the trial Court has applied multiplier by considering the suffering of disability of the claimant at 10% and awarded a sum of Rs.76,800/-. Since the petitioner was aged about 55 years by the date of passing the award and he was almost on the verge of retirement he

will not be incurring any loss towards his future income by virtue of the disability.

6. This appeal is filed by the Insurance Company aggrieved by the order of the trial Court whereby O.P. was filed by the claimant as against the insurer claiming compensation for Rs.4.00 lakhs, and the trial Court has awarded a sum of Rs.1,78,800/- under different heads. I find force in the contention put forth by the learned Standing Counsel for the appellant – Insurance Company, but having regard to the fact that due to the disability, the claimant would certainly suffer pain and loss in his future dates, for which, this Court feels that at least some amount should be awarded towards disability, and hence, an amount of Rs.50,000/- is awarded as against Rs.76,800/- awarded by the Tribunal.

7. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

T.AMARNATH GOUD, J

05.12.2018

bcj