THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3212 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/claimant aggrieved by the grant of compensation of Rs.8,000/- with proportionate costs and interest at 9% per annum from the date of petition till the date of realisation, as against a claim of Rs.1,20,000/-, by the learned Chairman, Motor Accident Claims Tribunal – cum – V Additional District Judge at Nizamabad (for short, "the Tribunal") *vide* order, dated 19.07.2005, passed in O.P.No.220 of 2001.

2. Heard the submissions of the learned counsel appearing for the appellant/claimant and the learned Standing Counsel for the United India Insurance Company Limited appearing for respondent No.2, and perused the record.

3. Learned counsel for the appellant/claimant would contend that the claimant suffered several grievous injuries all over her body and incurred medical expenses to a tune of Rs.40,000/-, but the Tribunal did not consider the oral and documentary evidence and as against a claim of Rs.1,20,000/-, it granted a total compensation of Rs.8,000/- only with proportionate costs and interest at 9% per annum from the date of petition till the date of realisation, which is meagre; that there is a policy of insurance to the offending jeep bearing No.AP-1-C-2900 which was valid on the date of accident; that the Tribunal held that the claimant was a paid passenger and absolved the liability of respondent No.2/Insurance Company by dismissing the claim against it and

ultimately, prayed to tag the liability against respondent No.2/Insurance Company and also enhance the compensation. In support of the same, learned counsel relied on a judgment, dated 20.03.2009, of Jharkhand High Court passed in M.A.No.41 of 2008 in **United India Insurance Company Limited vs. Sukhni Mahto and others.**

4. On the other hand, learned Standing Counsel for the United India Insurance Company Limited appearing for respondent No.2 would contend that the claimant was a paid passenger and the same is mentioned in Ex.A-1 - F.I.R. and also Ex.B-2 – Inquest Report; that Ex.B-1 is the copy of policy of insurance wherein risk of paid passengers are not covered; that there is evidence of R.W.1 – employee of respondent No.2/Insurance Company to substantiate that there is no coverage of risk of the claimant under Ex.B-1; that there are no circumstances to enhance the compensation and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both the counsel, the points that fall for determination are:

"1. Whether the appellant/claimant is entitled for enhancement of compensation?
2. Whether respondent No.2/Insurance Company can be made liable to pay the compensation to the appellant? and
3. Whether the impugned order is liable to be confirmed?"

6. **<u>POINT No.1</u>:-** As far as quantum of compensation, the Tribunal relied on the evidence of P.W.1, Ex.A-2 – xerox copy of police requisition – cum - Medical Certificate and other medical record such as prescriptions, Disability Certificate etc., As per Ex.A-2, the claimant suffered the following three injuries:

> ***"i) Contusion admeasuring 3"x3" on the chest***
> ***ii) Lacerated wound measuring 1 ½" x ¼ x ¼" on the left partial head***
> ***iii) Abrasion 2"x2" on the right shoulder***
> ***iv) Contusion measuring 4"x4" on the left greater trachenta."***

As per the Inquest Report under Ex.B-2, all the above injuries are simple. Further, with regard to the disability and other medical record, the Tribunal found that there is inconsistency in the medical record issued by the Government Hospital and the same was obtained from other source. There is also evidence of P.W.2 – Dr.T.Narsing Rao. On earlier occasions, this Court and the Tribunal held that the said Doctor is in the habit of exaggerating the injuries and disabilities and in most of the cases, his evidence without there being X-rays had not been considered. In the instant case also, there are no X-rays. Under these circumstances, the Tribunal is justified in granting compensation of Rs.8,000/- to the claimant.

7. **<u>POINT Nos.2 & 3:-</u>** Admittedly, under Ex.B-1 – policy of insurance, there is no coverage of risk of paid passengers. As per Inquest Report, the claimant was travelling in the offending vehicle as a paid passenger. The subject jeep bearing No.AP-1-C-2900 is a private vehicle meant for transportation of human beings and it is not a goods vehicle.

8. It is apt to refer to a decision reported in **Manuara Khatun and others Vs. Rajesh Kumar Singh and others[1]** wherein the Apex Court directed the insurer/Insurance Company to deposit the compensation awarded at the first instance and then, recover the

[1] (2017) 4 Supreme Court Cases 796

same from the owner of the offending vehicle in case of gratuitous passenger travelling in a private vehicle. In **Manuara Khatun**'s case, the vehicle involved is a Tata Sumo and the passengers therein were travelling on hire. For violation of conditions by the owner and driver of the offending vehicle, the Apex Court directed the insurer/Insurance Company to deposit the compensation awarded at the first instance and then, recover the same from the owner of the offending vehicle in the very same proceedings before the Tribunal by filing an Execution Application. In the decision relied upon by the learned counsel for the appellant herein, it is held that the vehicle was taken on hire by the claimants therein for going to Bokaro Hospital and on the way, the vehicle met with an accident. It was held that admittedly, the vehicle was insured as a private car and not as a commercial vehicle and that the Insurance Company had no liability to make payment of compensation.

9. Admittedly, the claimant was a paid passenger travelling in the jeep bearing No.AP-1-C-2900. There is no coverage of risk of the gratuitous passenger under Ex.B-1 – policy of insurance. For that, the claimant should not suffer. Admittedly, the offending jeep is a private vehicle meant for travelling. The facts and circumstances, the case on hand is similar to the facts and circumstances of the case in **Manuara Khatun**'s case wherein the Apex Court directed the insurer/Insurance Company to deposit the compensation awarded at the first instance and then, recover the same from the owner of the offending vehicle. A similar direction can be given in this case also.

10. Accordingly, the appeal is allowed in part confirming the compensation awarded to the claimant by the Tribunal and modifying the order, dated 19.07.2005, passed in O.P.No.220 of 2001 by the Tribunal directing respondent No.2/Insurance Company to deposit the compensation awarded at the first instance and then, recover the same from the owner of the offending jeep bearing No.AP-1-C-2900 i.e., respondent No.1 herein, in the very same proceedings before the Tribunal by filing an Execution Application. There is no change with regard to the other conditions imposed by the Tribunal. There shall be no order as to costs.

11. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 18.09.2018
AMD

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