THE HON'BLE MS. JUSTICE J.UMA DEVI

M.A.C.M.A.No.1650 of 2010

JUDGMENT:

Against the award dated 02.09.2002 passed in M.V.O.P.No.480 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Kadapa, the present appeal is filed by the United India Insurance Company Limited which has been arrayed as the 2nd respondent in the above mentioned O.P.

The parties will hereinafter be referred to as they are arrayed in the aforementioned O.P.

The factual background of the case is briefly stated as follows:

That on 03.03.2001 at about 12:15 pm, while the petitioner and his friend Shabuddin were proceeding on the road leading to Yerraguntla from Proddatur on his Spark Moped, both of them met with an accident due to hitting of their Spark Moped by a lorry bearing No.AHH 2056 which was driven by its driver in a rash and negligent manner. Soon after the accident, both the petitioner and his friend were taken to Government Hospital, Proddatur. In the above mentioned accident, the petitioner received crush injury to his right hand as the front tyre of the lorry ran over his right hand. A surgery was conducted and the right hand of the petitioner upto the elbow was amputated. He was provided treatment for 20 days as an in-patient and an amount of more than Rs.35,000/- was spent towards medical expenditure. After he was discharged from the Government General Hospital, Proddatur, he took treatment from a private Orthopaedic Doctor. It was also asserted by the petitioner that prior to the accident, he was working as a Constable at Yerraguntla Police Station and was drawing monthly salary of Rs.5,749/-. As the driver of the lorry bearing No.AHH 2056 was responsible for causing of crush injury to his right hand, due to which he became disabled permanently, the petitioner laid a claim against the owner and the insurer of the offending lorry bearing No.AHH 2056 for a sum of Rs.8,50,000/-.

The 1st respondent-owner of the offending lorry contended in his counter that the compensation claimed by the petitioner was excessive and that he has to establish his income and the amount spent by him towards medical expenditure. He has also contended that his lorry was insured with the 2nd respondent-insurance company and the policy obtained by him in respect of the lorry was in force. As the 2nd respondent agreed to indemnify his liability by virtue of the policy obtained for his lorry, the compensation amount is payable by the insurance company alone.

The 2nd respondent-insurance company, while disputing its liability to pay compensation, raised the contention that the petitioner without establishing his income particulars and the amount, if any, spent by him towards medical expenditure, is not entitled to get any compensation. It was also the contention of the 2nd respondent-insurance company that the rider of the Spark Moped contributed to the occurrence of the accident. The insurance company has raised a further contention that the driver of the lorry was not possessing a valid driving licence at the material point of time and that he was possessing a licence to drive light motor vehicles and since the policy conditions were violated by the lorry owner, it cannot be held liable to pay compensation.

The petitioner, in support of the contentions he raised in his claim petition, examined himself as P.W.1 and marked Exs.A.1 to A.6. Ex.A.1 is the attested copy of F.I.R in Crime No.14/3-3-01 of Yerraguntla Police Station. Ex.A.2 is the attested copy of the wound certificate issued by the Government Hospital, Proddatur. Ex.A.3 is the attested copy of the charge sheet. Ex.A.4 is the medical certificate issued by the District Medical Board. Ex.A.5 is his salary certificate and Ex.A.6 is the medical bills amounting to Rs.27.034/-. The 2nd respondent-insurance company did not choose to adduce oral or documentary evidence. It had also not denied the issuance of insurance policy in respect of the lorry involved in the accident.

The Court below, on close scrutiny of the evidence available on record, held that the accident occurred due to the rash and negligent driving of the offending lorry by its driver and, accordingly, awarded compensation of Rs.7,57,000/- in favour of the petitioner in respect of the crush injury he received to his right hand in the said accident.

Coming to the contention of the 2nd respondent-insurance company that the rider of the Spark Moped contributed for the occurrence of the accident, P.W.1 deposed that while he was proceeding on his Spark Moped driven by his friend Shabuddin from Proddatur Government Hospital to Yerraguntala, a lorry bearing No. AHH 2056 came in their opposite direction in a rash and negligent manner, dashed the Spark Moped on which he was proceeding as a pillion rider and as a result of it, he fell down and the right front side tyre of the lorry ran over his right hand. Immediately after the accident, himself and his friend were shifted to the Government Hospital at Proddatur and there the Doctors conducted surgery and amputated his right hand below the elbow. The 2nd respondent-insurance company, without adducing any sort of evidence, had attributed negligence on the part of the rider of the Spark Moped. It is evident from the deposition of the petitioner-P.W.1 that the driver of the offending lorry dashed the Spark Moped by coming in its opposite direction in a rash and negligent manner and only due to the negligent driving of the offending lorry, the accident in question had taken place. It is amply proved by the petitioner, by examining himself as P.W.1 and by producing Exs.A.1 and A.3, that the lorry driver is solely responsible for the accident. Simply because of a contention raised by the 2nd respondent-insurance company that the rider of the Spark Moped contributed for the occurrence of the accident which has not been established, the established case of the petitioner cannot be thrown out. I find no merit in the contention of the 2nd respondent-insurance company that the rider of the motor cycle is responsible for the occurrence of the accident.

The other contention raised by the 2nd respondent-insurance company that the compensation amount awarded to the petitioner in respect of the crush injury he received to his right hand which was later removed up to elbow by conducting surgery after his admission in the hospital is excessive and exorbitant is concerned, the fact that the petitioner was working as a Constable by the date of the accident is not in dispute. The petitioner, to prove that his right hand was amputated below the elbow by conducting surgery and that he took treatment in a Government Hospital for a period of 17 days and that a sum of Rs.35,000/- was incurred by him towards medical expenditure, got examined him as P.W.1 and marked Exs.A.2 and A.6-medical bills and the said medical bills produced by the petitioner would clearly establish the fact that he incurred a sum of Rs.27,034/- towards medical expenditure. Therefore, the Court below awarded a sum of Rs.27,034/- towards medical expenditure. The Court below, taking into consideration of the fact that the petitioner received crush injury to his right hand in the accident, and the same was subsequently removed upto elbow, awarded a sum of Rs.10,000/- under the head of pain and suffering.

It is evident from Ex.A.5-salary certificate that the petitioner was getting salary of Rs.5,749/- per month. The petitioner was aged about 40 years by the date of the accident. The Medical Board issued Ex.A.4-medical certificate stating that he is having disability of 75%. Due to amputation of right upper arm upto elbow, the difficulty and inconvenience which he has to face through out his life is unimaginable. He lost the chances of getting promotion, due to such disability. Looking into the aforementioned aspects, the lower Court granted compensation of Rs.7,20,000/- and the compensation so awarded appears to be reasonable. In the light of my aforementioned view, I find no merit in the contention of the insurance company that the compensation awarded by the Tribunal is on higher side and the same requires to be reduced.

But so far as the rate of interest awarded on the compensation amount, there arises a need to intervene, as it is felt that the interest awarded at the rate of 9% is on higher side. Hence, the same is reduced to 7.5% from 9% per annum.

In the result, the award passed by the Court below is modified or corrected only as to the rate of interest by reducing it to 7.5% from 9% per annum and rest of the award under appeal has not been interfered with.

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

J. UMA DEVI, J

Date: 17.07.2018
JSU

THE HON'BLE MS. JUSTICE J.UMA DEVI

M.A.C.M.A.No.1650 of 2010

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