THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 3829 of 2012

JUDGMENT:

This appeal is arising out of the Order and Decree dated 16.09.2011 passed in M.A.T.O.P. No.594 of 2008 by the Chairman, Motor Accident Claims Tribunal, III Additional District Judge, (FTC 2), Khammam.

2. Brief facts of the case are that on the evening of 14.11.2005, the claim petitioner, who is a Coolie, was proceeding along with his father to Anantagiri to Shanti Nagar. At about 5.00 PM, while they were crossing the road at Shantinagar bus stage, an auto bearing No.AP 24V 8016, driven by its driver in a rash and negligent manner, came at a high speed and dashed against the petitioner. As a result, the claim petitioner sustained compound fracture at the end of left radius, multiple abrasions over part lateral aspect of right forearm, left shoulder, left fore arm scalp, lacerated wound over left radius, lacerated wound on left side of scalp, fracture over right wrist, multiple injuries all over the body. Immediately the petitioner was given first aid and thereafter shifted to Mamatha General Hospital, Khammam, where he was treated as inpatient for one month during which bandages were applied, X-rays were taken on fracture injuries, debridement was done, and operation was done on the fracture of right wrist, under which skin was grafted. Steel rods and plates were also inserted at the fractured parts. After discharge from the hospital, the petitioner has taken treatment as outpatient for six months. As a consequence of the injuries sustained, the petitioner is unable to attend to his normal duties of a Coolie and is unable to lift weights

and thereby he has become permanently disabled. Police, Kodad Rural, has registered a case against the driver of the crime auto in Crime No.173 of 2005 for the offence punishable under Section 337 IPC. Alleging that the accident occurred due to the rash and negligent driving by the driver of the crime auto, the petitioner filed the claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.2,00,000/- against respondents 1, 2 and 3, the driver, owner and the insurer, respectively, of the crime auto.

The 1st respondent-driver remained ex parte. The 2nd respondent-owner and the 3rd respondent-insurer contested the claim petition. The 3rd respondent-insurer filed a counter denying the allegations in the claim petition. The insurer has also contended that the driver of the crime auto was not having valid driving licence at the time of accident and therefore, it is not liable to pay compensation.

Basing on the pleadings, the Tribunal framed three issues. The first issue is with regard to the rash and negligence; the second issue with regard to the entitlement of the petitioner to compensation; and the third with regard to the relief.

On behalf of the petitioner, PWs.1 and 2 were examined, and the documents Exs.A1 to A6 were marked. On behalf of respondent No.2, RWs.1 and 2 were examined, and the documents Exs.B1 and B2, and X-series documents Exs.X1 and X2 were marked.

The Tribunal, on consideration of the oral and documentary evidence available on record, has held that the accident occurred due to the rash and negligent driving by the driver of the crime auto and, therefore, awarded compensation of Rs.2,53,300/- with interest at 7.5% per annum from the date of petition till realisation, against 2nd respondent-owner of the crime vehicle, as the 1st respondent-driver had no valid driving licence at the time of accident. However, the Tribunal, considering the judgment of the Hon'ble Supreme Court in **Kusum Lata v. Satbir**[1], has directed the 3rd respondent-insurer to first pay the compensation to the petitioner, and then recover the same from the owner of the vehicle; and also directed the petitioner to pay the Court fee for the compensation awarded in excess of the claim in the original petition.

Aggrieved by the Award passed by the Tribunal, the 3rd respondent-insurer filed this appeal.

3. Heard the arguments of Sri A.V.K.S. Prasad, learned counsel for the insurance company; and Sri K. Prabhakar Rao, learned counsel for the petitioner-claimant.

4. Learned counsel for the appellant mainly disputed the quantum of compensation, and also the liability of the insurance company to pay the compensation. As far as the aspect of quantum is concerned, the learned counsel submitted that the Tribunal has awarded Rs.46,000/- towards pain and suffering and the said amount is highly excessive keeping in view the nature of injuries i.e., injuries No.3 and 5; and therefore, the petitioner is not entitled for Rs.46,000/- towards pain and suffering in view of the nature of injuries suffered by him and therefore sought to reduce the quantum of amount awarded towards pain and suffering. Learned counsel for the appellant further submitted that the medical treatment was given free of cost on White Ration Card and, therefore, the petitioner is not entitled to claim any amount towards medical expenses. Learned counsel has also contended that the driver of the crime vehicle was not holding valid driving licence at the time of accident.

[1] 2011 ACJ 926

5. Per contra the learned counsel for the respondent herein (petitioner-claimant) submitted that the petitioner has suffered two grievous injuries and three simple injuries and the Tribunal has awarded Rs.40,000/- towards two grievous injuries and Rs.6,000/- towards three simple injuries. The learned counsel further submits that the petitioner has taken treatment as inpatient for 40 days in Mamatha General Hospital, Khammam, and has undergone two operations. Learned counsel referred to paragraph 8 of the order of the Tribunal, which reads as under:

> *"8…. The testimony of P.W.2 goes to show that P.W.1 admitted in their hospital on 17-11-2005 with the injuries:*
>
> *1) Abrasion on the dorsum of left fore arm*
> *2) Abrasion on the left shoulder*
> *3) Lacerated wound over the left wrist*
> *4) Lacerated wound over the left side of the scalp*
> *5) Compound chip fracture lower end left radius.*
>
> *Injuries 1, 2, 4 are simple in nature and 3rd and 5th injuries are grievous in nature. P.W.1 was in the hospital for 40 days. He underwent operation for two times. First operation was wound debridement and second operation was skin grating. P.W.1 has deformity and disability of 30% which is permanent in nature and the movements of left wrist were restricted. P.W.1 cannot lift heavy weights. P.W.1 might have spent Rs.30,000/- towards medical expenses. Ex.A.8 is the copy of case sheet. When she was confronted by the counsel for R-3, he admitted that as per Ex.A.8 case sheet P.W.1 sustained injuries as he fell down from the auto on 14-11-2005, the same was informed to him by the father of P.W.1. The statement made by the father of P.W.1 was mentioned in Ex.A.8 in page No.8. P.W.2 admitted that fracture and crush injury both injuries were caused to the left wrist at the same place. Treatment was given on free of cost on white ration card. He denied the suggestion that P.W.1 was not suffering 30% and P.W.1 can lift weights."*

6. Placing reliance on the above, the learned counsel for the respondent herein (petitioner-claimant) submitted that the petitioner has undergone trauma due to the injuries suffered in the accident and the quantum of compensation awarded by the Tribunal is just and reasonable and the same does not require

interference. With regard to the liability of insurance company, the learned counsel submitted that in view of the judgment in **Iyyapan v. United India Insurance Co. Ltd.**[2], the insurance company is liable to pay and recover and, therefore, the Tribunal has rightly directed the insurance company to first pay the compensation to the petitioner-claimant, and then recover the same from the 2nd respondent-owner and, therefore, the findings of the Tribunal does not require any interference.

7. It is pertinent to note that there is no dispute with regard to the nature of injuries suffered by the petitioner i.e., two grievous injuries and three simple injuries. There is also no dispute with regard to the treatment undergone by the petitioner for 40 days and also operation for two times. The petitioner has suffered 30% disability and he cannot lift weights. On consideration of all these aspects, the Tribunal has awarded an amount of Rs.46,000/- towards pain and suffering, and the same does not appear to be on higher side. Coming to the aspect of liability of insurance company, the Hon'ble Supreme Court in **Iyyapan (2 supra)**, the Hon'ble Supreme Court held in paragraphs 18 and 19 as under:

> *"18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the*

[2] (2013) 7 SCC 62

> *insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.*
>
> *19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.*

8. Having regard to the facts and circumstances of the case, the Award passed by the Tribunal does not require any interference. The appeal is devoid of merit and is liable to be dismissed.

9. **IN THE RESULT**, the appeal is dismissed, confirming the Order and Decree dated 16.09.2011 passed by the Tribunal in M.A.T.O.P. No.594 of 2008. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

GUDISEVA SHYAM PRASAD, J

16th March, 2018
KSM

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