THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.1005 OF 2010

JUDGMENT:

The United India Insurance Company, which has been arrayed as 2nd respondent in M.V.O.P.No.250 of 2008 has come before us by preferring the present appeal challenging the direction given to it to pay the awarded compensation of Rs.8,90,590/- to the claimant and then recover the compensation so paid from the vehicle owner whose liability it agreed to indemnify by virtue of the policy obtained from it.

2. The prime contention of the Insurance Company is that though it has been proved by it that the auto driver had no valid and effective driving licence to drive a passenger carrying vehicle as on the date of the accident by way of production of Exs.B2 and X3, liability is fastened as against it to pay compensation of Rs.8,90,590/- and recover the same from R1. As it has been established by the Insurance Company that the terms and conditions of the policy are breached by the owner of the auto by way of production of Exs.B2 and X3, the Court below ought not to have fastened the liability as against the Insurance Company; In stead of exonerating the Insurance Company from its liability to pay compensation first a direction is given to it to pay the

compensation to the claimant and then to recover the same from the owner of the auto.

3. The Insurance Company apart from the contending that the direction given to it to pay compensation is wholly unsustainable in law has come up with other contention that the evidence given by P.W.4-Neuro Surgeon has not been appreciated by the Court below in a proper perspective. It is its contention that it has been deposed clearly by P.W.4 that the petitioner can attend to his normal duties without the help of others. As no disability certificate issued by the Medical Board is produced by the claimant, the Court below ought not to have taken the evidence of P.W.4 into consideration to assess the compensation Rs.8,90,590/-. Since the evidence of P.W.4 is clear to the effect that the petitioner can attend to his normal duties without the help of others, the Court below ought not to have awarded a sum of Rs.3,51,000/- under the head of loss of earning capacity and the compensation so awarded under the said head is highly excessive. From the aforementioned contentions raised by the appellant-Insurance Company, it is understood that the only dispute it raised is regarding fastening of initial liability of payment of compensation and quantification of compensation.

4. I have perused the award under challenge and also the pleadings of the parties and the evidence on record.

5. The learned trial Judge placing reliance on the evidence of P.W.2, whose evidence is corroborated with the contents of Exs.A1 and A3, has rightly held that the accident, which resulted injuries to the petitioner occurred due to negligent driving of the auto bearing No. AP 03 W 3148 by its driver.

6. The learned trial Judge seems to have assessed the compensation under the head of loss of earning capacity taking into consideration of the evidence given by P.W.4, the neuro Surgeon in Apollo Speciality Hospital at Chennai, where the claimant took treatment for the multiple injuries he received to head and other parts of the body. It is evident from the testimony of P.W.4 that claimant took treatment in Apollo Speciality Hospital, Chennai, from 19.11.2007 to 21.01.2008 as an inpatient. The Neuro Surgeon under whose care and supervision the claimant took treatment for a considerable period of 2 to 3 months deposed that the claimant had not fully recovered because of head injury (brain injury-traumatic brain injury) and the disability he attained due to head injury was about 75%. He opined that the claimant requires continuous treatment for the head injury. It is no doubt true that P.W.4 deposed that the

petitioner is able to attend to his normal activities like bathing, dressing and eating without the help of others. But, this cannot be a ground to discard his entire testimony where he stated that the petitioner not recovered fully and that he requires continuous treatment for the said injury etc.,

7. Taking into consideration of the inability of the petitioner to attend to brick business and the agricultural operations, which he was doing earlier, the Court below had roughly assessed the income of the petitioner at Rs.3,000/- per month by placing the reliance on the judgment of the apex Court in *Smt.Sarala Verma and others v Delhi Transport Corporation and another* (2009 (4) SCJ 91). The trial Judge assessed the compensation under the head of loss of income at Rs.3,51,000/-. As it is evident from Ex.A2-wound certificate that the petitioner sustained two simple injuries and a grievous injury, for which, he was forced to take treatment under the care and supervision of Neuro Surgeon, Apollo Speciality Hospital, Chennai, for a considerable period of 2 to 3 months, the Tribunal awarded reasonable compensation of Rs.24,000/- under the head of pain and suffering and an amount of Rs.10,000/- under the head of transportation charges. In my view, the amounts awarded under aforesaid heads are fair and reasonable. I also have

not noticed any irrationality in awarding compensation of Rs.1,000/- under the head of loss of damage to clothes.

8. The learned trial Judge after going through the contents of Exs.A5, A6 and A7-medical bills and the genuineness or correctness of which was not disputed, awarded a sum of Rs.5,15,590/- towards medical expenditure. It appears that no evidence is adduced by the Insurance Company to disprove Exs.A5, A6 and A7. The computation of compensation made by the Tribunal under various heads viz., loss of income, pain and suffering and medical expenditure cannot in any way be said as unjust and unfair, and that in my view, the Tribunal has not committed any error in assessing the compensation under the aforementioned heads at Rs.8,90,590/-.

9. Coming to the challenge made by the Insurance Company in respect of direction given to it to pay compensation first to the claimant and then to recover the same from the owner of the offending vehicle is concerned, it is evident from Exs.B2 and X3, driving licence and extract of driver of 1st respondent that licence issued in favour of the driver of the offending auto expired by 04.11.2007, and it was renewed on 11.06.2008. Thus, it is clear from the contents of Exs.B2 and X3 that as on the date of the accident, the driver of the offending auto was not possessing

valid and effective driving licence. Taking note of the said fact on examining the contents of Exs.B1, B2 and X3, the Court below came to the opinion that the terms and conditions of the policy were breached by the vehicle owner by handing over his vehicle to a driver who was not possessing valid and subsisting licence as on the date of the accident. The Tribunal had came to the correct opinion that the 1st respondent/insured breached the terms and conditions of policy. The Tribunal placed reliance on the decision of the apex Court in *National Insurance Company Limited V Swaran Singh and others* ((2004) CLT 1 (SC)), which was followed in *United India Insurance Company Limited v Kamal Maruti Darekar and others* (2008 ACJ 1940) for fixing initial liability of payment of compensation as against the appellant and then to recover the same from the vehicle owner as the claimant who was third party to the contract of insurance was nothing to do with the terms and conditions of the policy.

10. I find no merit in the contention raised by the Insurance Company that initial liability of payment of compensation has been fastened as against it wrongly.

11. In view of my above finding that there is no merit in the contention of the Insurance Company that it has been wrongly directed to pay compensation to the claimant first

and then initiate proceedings for recovery as against the vehicle owner, the appeal filed by the Insurance Company deserves to be dismissed.

12. In the result, the appeal is dismissed confirming the judgment, dated 31.03.2010 in M.V.O.P.No.250 of 2008 passed by the Chairman, Motor Accident Claims Tribunal-cum-III Addl. District Judge, Tirupathi. No order as to costs.

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

J.UMA DEVI, J

DATED: 12 DAY OF DECEMBER, 2018.
Hsd