THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2854 OF 2005

JUDGMENT:

This appeal is filed by the appellant/2nd respondent/insurance company aggrieved by the Order dated 18.10.2004 passed in O.P.No.2521 of 2002 by the XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short, the Court below).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Court below in the original petition.

3. The brief facts of the case are that on 11.01.2002 at about 7.30 hours, the petitioner as a rider and his friend by name Mr.P.Anantha Krishna as pillion rider were proceeding towards Himayathnagar very slowly. While reaching near Moula-Ali cross roads, at the same time, one car bearing No.AP-31-C-5001 came in opposite direction in rash and negligent manner with high speed and dashed against the petitioner's motor cycle. Due to the said impact, the petitioner and his friend fell down on the road and sustained grievous fracture and multiple injuries all over the body and immediately the petitioner was shifted to New City Hospital, Secunderabad, for treatment. On the next day, the petitioner was shifted to Kamineni Hospital for better treatment. The accident occurred only due to the rash and negligent manner with high speed driving of driver of car bearing No.AP-31-C-5001. Due to the said accident, the petitioner

sustained fracture to shaft femur and fracture to both bones right leg and multiple injuries all over the body. The petitioner was in unconscious state for some days. The petitioner was inpatient for more than 15 days in Kamineni Hospital and steel rods were implanted into his right leg. Still further operation is required and still he is undergoing treatment. The petitioner was aged about 25 years as on the date of the accident and holding degree in B.E. Computer Sciences. Before the said accident, the petitioner was hale and healthy and he was working in ECIL as Software Engineer and he was earning Rs.15,552/- per month. It is said that the petitioner used to contribute his total earnings for the maintenance of his family. The petitioner sustained permanent disability and he is unable to do heavy works and lost all his income benefits and comforts. Hence, the petitioner filed the claim petition claiming a compensation of Rs.5,00,000/-, payable by both the respondents, being the owner and insurer of the crime vehicle.

4. Before the Court below, respondents 1 & 2 filed separate counters denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the evidence produced by the parties, the Court below granted total compensation of Rs.2,16,354/-, with interest @ 6% per annum from the date of petition till realization, i.e., Rs.2,000/- towards transportation charges, Rs.1,500/- towards damage of clothes, Rs.10,000/- towards

pain & suffering, Rs.10,000/- towards extra nourishment, Rs.10,000/- towards attendant expenses, Rs.85,015/- towards loss of earnings, Rs.77,839/- towards medical expenses and Rs.20,000/- towards uneasiness, inconvenience & temporary disability. Aggrieved by the said order, the appellant/insurance company filed the present appeal.

6. Heard Sri E.Venu Gopal Reddy, learned standing counsel appearing for the appellant/insurance company and Sri Mamidi Srinivas, learned counsel appearing for the 1st respondent/claimant. Perused the material available on record.

7. During the course of arguments, Sri E.Venu Gopal Reddy, learned standing counsel for the appellant/insurance company, contended that the order passed by the Court below is erroneous and the Court below has not considered the crucial fact i.e., Ex.B-1-xerox copy of insurance policy and no finding has been given to that effect.

8. Admittedly, the accident has taken place on 11.01.2002 at about 7.30 p.m. i.e., in the evening by car bearing No.AP-31-C-5001, which belongs to the 1st respondent in the O.P. As per the Registration number, the vehicle belongs to Visakhapatnam District. The 1st respondent/owner of the crime vehicle has obtained an insurance policy from the 2nd respondent/insurance company on 11.01.2002 at 2.15 p.m. The same is evident from Ex.B-1-insurance policy. Though in para 8 of the impugned judgment, the Court below has acknowledged the marking of

Ex.B-1-insurance policy, but in the judgment, the Court below has failed to deal with the said document.

9. It is specifically contended by the learned standing counsel for the appellant/insurance company that after the accident, the 1st respondent/owner of the crime vehicle has obtained the insurance policy by showing the time as 2.15 p.m. (14.15 hours). The Court below had no occasion to consider this anti-timing issue, as the case came to light in the departmental enquiry and action has been initiated against the concerned Officer.

10. Admittedly, it is not for this Court to appreciate the evidence and moreover when the Court below has passed the orders, the said fact was not available with the appellant/insurance company and accordingly, the same was not placed before the Court below. However, such action of the representatives of the insurance company cannot be appreciated and the *bona fide* action of the insurance company in initiating the action against its representatives is considered and while appreciating the same, this Court feels that the matter needs re-consideration of evidence and accordingly, the order passed by the Court below is liable to be set aside.

11. Accordingly, the appeal is allowed setting aside the order and decree dated 18.10.2004 in O.P.No.2521 of 2002 passed by the Court below and remanding the matter to the Court below to

consider the same afresh, leaving it open to both sides to adduce evidence and to make submissions. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 18th October, 2019

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