THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.769 OF 2005

JUDGMENT

Aggrieved by the judgment and decree dated 28-08-2002 passed by the Motor Accidents Claims Tribunal, (District Judge) at Hyderabad in O.P.No.45 of 1996, the insurance company, which is the 3rd respondent in the claim petition, filed the present appeal, questioning its liability.

The case of the claimant is that on 22-02-1995, while he was travelling in the lorry bearing No. AET 1917, proceeding towards Banswada, at about 11-00 a.m., when the lorry reached near Dalmalgutta on the main road of Hyderabad to Banswada, the driver of the lorry, drove the vehicle at high speed and in rash and negligent manner, due to which the lorry turned turtle and he received injuries all over the body and sustained fracture to right lower femur and was shifted to Government Hospital, Banswada, where he was referred to Government District Head Quarters Hospital, Nizamabad and thereafter, he took treatment privately and incurred expenditure to a tune of Rs.60,000/-.

The further case of the claimant is that as on the date of the accident, he was aged 60 years, and was earning an amount of Rs.1,000/- as an agriculturist and that on account of the accident, he sustained permanent disability and is unable to do any work. With these averments, the claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,00,000/-.

The respondent No.2 before the Tribunal, who was one of the owners of the crime lorry, remained ex party and 1st respondent before the Tribunal, who was also one of the owners, forfeited his right of filing written statement.

The insurance company filed written statement and disputed the manner of accident, pleaded by the claimant, disability sustained by him, and his age and income. The insurance company also disputed its liability.

Based on above pleadings, the Tribunal framed the following issues for trial:

1. Whether the petitioner is entitled to compensation sought for?
2. To what relief, the petitioner is entitled to?

In support of the case of the claimant, he got examined himself as P.W.1 and also examined the doctor, who treated him, as P.W.2. He got marked Exs.A-1 to A-3, and Ex.C-1 is the disability certificate issued by doctor – P.W.2. On behalf of the insured/owners and insurer, no evidence, either oral or documentary was adduced.

The Tribunal, based on the evidence of the claimant as P.W.1 and Exs.A-1 to A-3, which are the certified copies of FIR, wound certificate and charge sheet, and further as no contra evidence was lead on behalf of insured and the insurer, recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. AET 1917 and that the claimant sustained injuries in the said accident. This being finding of fact recorded by the Tribunal based on evidence, cannot be interfered with by this court, in the appeal.

Further, the Tribunal based on evidence of the doctor P.W.2 and Ex. A-2 - wound certificate and Ex. C-1 – disability certificate, found that the claimant who was running 65 years, as on the date of the trial, sustained fractured of right lower one-third of femur, lacerated wound on right arm and lacerated wound on left knee. The Tribunal also found that the claimant underwent treatment in Government hospital as well as privately experiencing pain and suffering and incurred inevitable expenditure for medicines, transport and extra nourishment and has finally incurred disability to an extent of 30 per cent. Considering these facts and circumstances, the Tribunal awarded an amount of Rs.50,000/- towards mal-united fracture leading to disability, Rs.10,000/- for pain and suffering and Rs.10,000/- towards inevitable expenditure for medicines, transport and extra-nourishment and thus, in all, awarded an amount of Rs.70,000/-.

With regard to quantum, from the above it could be seen that the Tribunal considering the disability sustained by the claimant, based on evidence both oral and documentary, awarded just compensation. I do not find any reason to interfere with the same and hence the compensation awarded by the Tribunal is confirmed.

With regard to liability of the appellant, the learned counsel appearing for the appellant – insurance company contended that the accident occurred on 22-02-1995 and the insurance policy issued by the appellant covering the lorry in question came into force with effect from 28-07-1995 and it was valid up to 27-07-1996. As the accident occurred prior to the coming into force of the policy, the insurance company is not liable to pay any amount. He contends that though the Tribunal also noted this fact, erroneously made the insurance company also liable along with the owners of the vehicle. Therefore, he sought to set aside the liability of the insurance company.

Sri Ch.Janardhan Reddy, learned counsel appearing for the claimant, contended that the insurance company has not lead any evidence and it merely denied its liability without any documentary proof and the Tribunal considering the evidence on record, made both the insured and the insurer jointly and severally liable and the same may not be interfered with by this court.

In the present appeal, the insurance company is questioning its liability, on the ground that as on the date of the accident, the policy was not in force. The accident in question occurred on 22-02-1995 and the Tribunal noted that as per the policy cover note No.453119, the policy was valid from 28-07-1995 to 27-07-1996. Further the appellant insurance company also filed MACMA.MP.No.4229 of 2005 in this appeal for receiving the certificate-cum-policy schedule of the crime vehicle. The said petition was allowed on 01-07-2016 and the policy was received as additional evidence and marked as Ex.C-2 for reference.

A perusal of Ex.C-2 goes to show that it was valid from 28-07-1995 to 27-07-1996 and the accident occurred on 22-02-1995. From this it is clear that as on the date of accident, the policy was not in force and, therefore, mulcting the liability on the insurance company, cannot be sustained. Though the Tribunal noted the period of subsistence of policy, failed to consider the date of the accident, and erroneously made the insurance company liable. The same requires to be set aside.

For the foregoing reasons, the impugned award to the extent of liability of the appellant – insurance company is set aside and the appeal is accordingly allowed.

Appellant – insurance company is at liberty to recover the amounts, if any, paid in pursuance of the interim orders of this court, from the owners of the crime vehicle.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:21—01—2019
AVS