THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1186 OF 2006

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 17.02.2006 passed in O.P.No.2023 of 2002 by the Motor Accident Claims Tribunal (III Additional District Judge) (FTC), Nizamabad (for short, the Tribunal).

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

3. The brief facts of the case are that the petitioner is the resident of Neela Village of Renjarla Mandal in Nizamabad District and businessman by occupation. On 03.05.2002 the petitioner and others were traveling in the jeep bearing No.GJ 6T 5272 from Neela to Nizamabad and at about 8.30 a.m. when the jeep reached near Nizamabad Town, its driver drove it at a high speed in a rash and negligent manner and lost control over it. As a result of it, jeep turned turtle and caused the accident in which the petitioner and other persons received injuries. The petitioner sustained fracture to the right shaft femur and other grievous injuries and lacerations all over the body. Before the accident, the petitioner was earning Rs.10,000/- per month by doing business, but on account of the injuries sustained in the accident, he is not in a position to lift any weight or work properly, thus lost total earning capacity and suffered permanent disability. Hence, the petitioner filed the claim

petition claiming compensation of Rs.2,00,000/-, payable by both the respondents, being the owner and insurer of the offending jeep.

4. Before the Tribunal, the Respondent No.2 filed counter 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 oral evidence of P.Ws.1 & 2 and R.W.1 and the documentary evidence of Exs.A-1 to A-8 & Exs.B-1 & B-2, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the offending jeep and awarded total compensation of Rs.38,644/- and rounded off the same to Rs.38,500/- i.e., Rs.7,500/- towards fracture injury, Rs.2,000/- towards two simple injuries, Rs.27,144/- towards medical expenses, Rs.1,000/- towards pain & suffering and Rs.1,000/- towards transport charges, with interest @ 7.5% per annum from the date of petition till the date of realization, payable by the 1st respondent only and the petition against the 2nd respondent was dismissed. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

6. Heard Sri Heard Sri Azar Sravan Kumar, learned counsel for the appellant/claimant and Sri N.J.Sunil Kumar, learned standing counsel for the 2nd respondent. Perused the material record.

7. Sri N.J.Sunil Kumar, Learned standing counsel for the insurance company, contended that since the claimant was a gratuitous passenger, in which case the liability for payment of compensation for death or body injury to the passengers of such goods vehicle would not be covered, hence the principle of pay and recover would not apply.

8. Sri Azar Sravan Kumar, learned counsel for the claimant, submits that the compensation awarded by the Tribunal is very meager and prayed to enhance the same. He further submits that though the claimant travelled in the offending jeep as an unauthorized passenger, the liability of the insurance company cannot be exonerated. He further submits that even, for the sake of argument, the liability of insurance company is exonerated, the insurance company is still liable to pay the claimant at the first instance and then recover from the owner of the vehicle in view of the decision of the Apex Court in **Anu Bhanvara Vs. Iffco Tokio General Insurance Company Limited**[1].

9. Since the amount of Rs.7,500/- awarded by the Tribunal towards fracture injury is very meager, this Court is of the opinion that it would be just and reasonable if the same is enhanced to Rs.15,000/-. Therefore, the total compensation comes to Rs.46,000/-.

---

[1] 2019(5) ALD SC 287

10. Having considered the rival contentions, it is not in dispute that the lorry in question is a goods carriage vehicle; and at the time of accident, the claimant was traveling on the lorry as a gratuitous passenger, and there is no insurance coverage covering the risk of the claimant. It is also not in dispute that the insurance policy (Ex-B.1) was valid and subsisting as on the date of accident. Therefore, it can be said that the claimant travelled as a gratuitous passenger in the crime vehicle. In **Anu Bhanvara's** case, the Apex Court while dealing with the case of gratuitous passengers, directed the insurer to pay the awarded sum to the claimants therein and recover the same from the insured in the same proceedings. In view of the above, as respondent No.1 travelled as a gratuitous passenger in the lorry, it is just and reasonable to invoke the principle of 'pay and recover'. Therefore, the finding of the Tribunal directing the 1st respondent/owner to deposit the compensation amount is set aside.

11. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.38,500/- to Rs.46,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till the date of realization. The 2nd respondent/insurance company shall pay the enhanced compensation amount to the appellant/claimant in the first instance, and recover the same from the 1st respondent/owner of the lorry. The 2nd respondent is directed to deposit the

enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount. The 2nd respondent/insurance company shall recover the said enhanced compensation from the 1st respondent/owner of the lorry. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

T.AMARNATH GOUD, J

Date: 11th November, 2019

KL