

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.350 OF 2005

AND

M.A.C.M.A.No.2735 OF 2005

COMMON JUDGMENT:

MACMA No.350 of 2005 is filed by the claimant and MACMA No.2735 of 2005 is filed by the insurance company against the judgment and decree, dated 08.12.2004 passed in O.P.No.1206 of 2001 by the Motor Accidents Claims Tribunal-cum-VI Additional District Judge (FTC), Nizamabad (for short 'the Tribunal).

2. Since both the appeals arise out of the same O.P, they are heard together and disposed of by way of this common judgment.

3. For the sake of convenience, the parties herein are referred to as arrayed before the tribunal.

4. It is the case of the petitioner that on 29.03.2001 at 10.45 p.m, he along with others were travelling in a jeep bearing No.MTJ 7044 from Nandipet to Nizamabad and on the way at Chikli Village shivar at a bridge the driver of the jeep drove the same at high speed in a rash and negligent manner and dashed against a bridge, for which the jeep turned turtle and the petitioner sustained fractures and other injuries and that after the accident he was treated in Government Hospital, Nizamabad and thereafter, he took treatment from private doctors, as against the claim of Rs.1,50,000/-.

5. Respondent No.1 filed written statement denying the claim petition and that it is also contended that even if any compensation is payable, the same has to be paid by the 2nd respondent as his jeep was insured with the 2nd respondent. The 2nd respondent filed written statement

denying the claim petition and contended that the driver of the jeep allowed more passengers and could not control the jeep, for which the accident occurred and hence, prayed to dismiss the claim petition.

6. In order to prove the case of the claimant, himself examined as PW.1 and marked Exs.A1 to A.5 on his behalf. No oral or documentary evidence is adduced on behalf of the respondents in support of their contentions. Basing on the pleadings, oral and documentary evidence, the tribunal framed the following issues:

- 1) Whether the accident has taken place due to rash and negligent driving of the driver of the jeep bearing No.MTJ 7044 by its driver?
- 2) Whether the petitioner is entitled for compensation? If so, to what just amount and from which of the respondents?
- 3) To what relief?

7. On considering the oral and documentary evidence, the tribunal granted Rs.31,000/- and directed the respondents to pay the compensation amount with proportionate costs and interest @9% per annum from the date of petition till the date of realisation.

8. Learned counsel appearing for the claimant contended that the compensation granted by the tribunal is very meagre and hence, prayed to grant just and proper compensation.

9. Learned standing counsel for insurance company contended that the compensation granted by the tribunal is highly exorbitant and excessive and that the accident occurred due to rash and negligent driving of the jeep and that the driver of the jeep allowed more passengers and could not control the jeep and that as the claimant is gratuitous passenger, he is not entitled for any relief and that direct them to pay and recovery.

10. It is the case of injuries. There is no dispute with regard to the manner of accident and involvement of the vehicle. The judgment passed by the tribunal is well considered except the non surgical grievous injury and pay and recovery. The fracture of both bones of left leg is grievous in nature Rs.10,000/- granted by the tribunal is enhanced to Rs.15,000/- since it is a non surgical. Since the driver allowed more passenger there is violation of policy conditions. Therefore, the insurance company first pay the compensation amount within three months from the date of this judgment and recovery from the owner of the crime vehicle.

11. Thus, the claimant is entitled for total compensation of Rs.36,000/- (Rs.15,000/- + Rs.1,000/- + Rs.10,000/- + Rs.10,000/-). The enhanced compensation shall carry interest @ 7.5% per annum from the date of petition till the date of realisation. The injured claimant is entitled to withdraw the compensation amount soon after the deposit is made.

12. In view of the above, M.A.C.M.A.Nos.350 and 2735 of 2005 are partly allowed. There shall be no order as to costs.

Miscellaneous petitions, if any pending in these appeals shall stands closed.

T.AMARNATH GOUD,J

Date 26.09.2019
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