

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.528 of 2011

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 08-11-2010 passed in M.V.O.P.No.461 of 2008 by the Motor Accidents Claims Tribunal, Warangal, (for short, the Tribunal).

2. Brief facts of the case are that on 11-01-2008 at about 1600 hours, when the claimant was riding his scooter bearing No. AP-9N-893 to his house from Nellutla Chowrastha, the driver of the jeep bearing No.AP-12T-9321 drove it rashly and negligently at a high speed and hit his scooter, due to which, he sustained injuries to all over the body and fracture to femur of left thigh and he was shifted to hospital for treatment. Hence, he filed the claim petition claiming compensation of Rs.1,50,000/- for the injuries sustained by him against the respondent Nos.1 and 2 who are the owner and insurer of the crime vehicle.

3. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver of the crime vehicle only and fixed the liability on the 1st respondent-owner of the crime vehicle by exonerating the 2nd respondent-insurer holding that if the driver of the offending vehicle was not holding valid and

subsisting licence at the time of the accident, the Courts need not invariably direct the insurance company to pay compensation amount in the first instance and recover the same from the owner of the offending vehicle. It relied upon the judgment of this Court in **New India Assurance Company Ltd., v. G.Sampoorna**¹. So far as granting of compensation is concerned, the Tribunal granted an amount of Rs.69,027/- i.e. Rs.42,027/- towards medical expenses; Rs.15,000/- towards loss of earnings for three months; Rs.10,000/- towards pain and suffering for one grievous injury and Rs.2,000/- towards pain and suffering for one simple injury. Accordingly, it partly allowed the claim petition granting compensation of Rs.69,027/- with interest at 6% per annum through out.

4. Dissatisfied with the quantum of compensation, the appellant/claimant filed the present appeal, seeking for enhancement of the compensation.

5. Heard the learned counsel for the appellant-claimant and Sri N.Mohan Krishna, learned Standing Counsel appearing for 2nd respondent.

6. Learned counsel for the appellant-claimant contends that the Tribunal erred in awarding meager compensation of Rs.15,000/- towards injuries; that the Tribunal also ignored awarding compensation for the additional heads viz., attendant charges, transportation and extra nourishment; that the Tribunal also ignored in

¹ 2010 (5) ALT 105

granting compensation for the grievous injury to the left femur of left thigh sustained by the claimant. Further, he also pointed out that the Tribunal wrongly fastened the liability on the owner of the crime vehicle only by exonerating the insurer. In support of his contention, he relied upon the decision of the Supreme Court in **Mukund Dewangan v. Oriental Insurance Company Limited**². Hence, he prayed to dismiss the appeal in-toto.

7. As seen from the order of the Tribunal, the Tribunal has rightly granted compensation to the claimant under various heads. However, it is important to take note that the claimant sustained grievous injuries and also fracture at the time of accident. The Tribunal while granting compensation for the pain and suffering ignored granting compensation for the grievous injury sustained by the claimant to his left femur of left thigh as contended by the learned counsel for the claimant. Hence, granting compensation of Rs.15,000/- towards non-surgical grievous injury for left femur would be just and reasonable. Further, with regard to attendant charges for a period of tend days i.e. from 11-01-2008 to 21-01-2008, a sum of Rs.1,000/-; a sum of Rs.1000/- towards transportation and a sum of Rs.2,000/- towards extra nourishment can be awarded to the claimant.

8. Except the above modification, the compensation awarded by the Tribunal under other heads shall remain unchanged.

² (2017) 14 S.C.C. 663

Therefore, the claimant is granted total compensation of Rs.88,027/- (Rs.69,027/- + Rs.15,000/- + Rs.1,000/- + Rs.1,000/- + Rs.2,000/-)

9. Insofar as fixing the liability is concerned, since the driver of the vehicle was holding non-transport vehicle of driving licence, it cannot be said that the insurance company is not liable to pay compensation. In **Mukund Dewangan** (1 supra), the Supreme Court held that “Holder of a driving licence to drive class of Light Motor Vehicle as provided in Section 10 (2) (d) of the Act is competent to drive the transport vehicle. So Light Motor Vehicle would include the transport vehicle. Hence, the liability is fastened on the insurance company also.

10. In the result, the appeal is allowed in part by enhancing the compensation awarded by the Tribunal from Rs.69,027/- to Rs.88,027/- (Rupees Eighty Eight Thousand and Twenty Seven only) and fastening the liability on both the respondents to pay the compensation to the claimant jointly and severally as awarded by the Tribunal. The enhanced amount of compensation shall carry interest at 7.5% per annum. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the entire amount. No costs.

11. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 19.08.2019
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