THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.1042 OF 2005

JUDGMENT

Not being satisfied with the compensation granted by the Motor Vehicle Accident Claims Tribunal - cum - III Additional District Judge, Karimnagar in O.P.No.778 of 2003 dated 27-01-2005, the claimant / injured, filed the present appeal seeking enhancement.

The case of the claimant is that he is a toddy tapper by profession and earning an amount of Rs.3,000/- per month. On 30.07.2002, while he was proceeding in an auto bearing No. AP – 1 – U – 2032, along with other passengers and that, when the auto reached Sadashivapalli area, the 1st respondent – driver – cum – owner of the auto, drove it in a rash and negligent manner with high speed and lost control when he observed an RTC bus, and dashed to the right side of the said bus. As a result, the claimant and other passengers sustained injuries. The claimant sustained injury on his fore-head and right hand wrist was fractured. Immediately, after the accident, he was taken to District Head Quarters Hospital, Karimnagar, where he was in patient up to 5.8.2002 and thereafter, he took treatment in a private hospital. The case of the claimant is that he suffered permanent disability and unable to climb trees, because of the fractured wrist. With these averments, he filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming Rs.18,000/- towards loss of earnings; Rs.2,000/- under transportation; Rs.10,000/- under extra nourishment; Rs.10,000/- for medicines and treatment; Rs.25,000/- under pain and suffering and Rs.10,000/- for permanent disability. His claim is that the respondents 1 and 2, who are the insured and the insurer, are jointly and severally liable to pay the compensation.

The insured and insurer filed written statements and denied the manner of accident, avocation and injuries sustained by the claimant and sought to dismiss the claim petition.

The Tribunal, considering the evidence of the claimant, who was examined as P.W.1, and Exs.A-1 and A-2, which are copies of FIR and charge sheet, held that the accident occurred due to rash and negligent driving of the 1st respondent, who is the driver-cum-owner of the auto.

However, the Tribunal held that as per the evidence of driver, R.W.1, nine passengers were traveling in the auto at the time of accident, i.e., over and above capacity of the auto, which is 3 + 1, thus the insured violated the conditions of policy. Therefore the Tribunal, made the insurer liable only to the extent of 50 per cent of the compensation, and the remaining 50 per cent was directed to be paid by the insured.

The Tribunal awarded Rs.15,000/- towards grievous injury; Rs.2,000/- for one simple injury; Rs.10,000/- towards pain and suffering; Rs.3,000/- towards medicines; Rs.3,000/- towards loss of earning for three months at the rate of Rs.1,000/- per month; and thus in all awarded an amount of Rs.33,000/- with interest at the 9 per cent per annum from the date of the petition i.e., 28.11.2003 till the date of deposit of the amount. The Tribunal also ordered for mode and manner of deposit of the compensation amount and its withdrawal.

Not being satisfied with the compensation, the claimant filed the present appeal.

Learned counsel for the appellant mainly contended that the accident occurred due to rash and negligent driving of the driver of the offending auto and the Tribunal also agreed with the same, but held that at the time of accident nine passengers were traveling in the auto, i.e., beyond its capacity, thus the insured violated the policy conditions and made the insurer liable only to the extent of 50 per cent. He stated that such finding cannot be sustained, for the reason that along with the claimant some other passengers were traveling and one of them died in the very same accident and his parents filed claim petition in O.P.No.41 of 2004 on the file of very same Tribunal in O.P.No.41 of 2004, where the Tribunal while awarding compensation, vide award dated 25.02.2005, found that the accident occurred due to rash and negligent driving of the driver of the auto and directed that the insurer is liable to indemnity the insured and both are made jointly and severally liable. Seeking enhancement of the compensation, the claimants therein, filed appeal before this court in MA.CMA.No.1143 of 2005, and this court also noticing the said factor, vide judgment dated 34.03.2015, enhanced the compensation. Learned counsel produced copies of the orders passed by the Tribunal and this court. Therefore, he submits that the insurer may be directed to indemnity the insured.

With regard to quantum of compensation, learned counsel for the appellant submits that the claimant is a toddy tapper by profession and earning an amount of Rs.3,000/- per month and that claimant also filed Ex.A-5, certificate issued by the President of Toddy Tappes Co-operative

Society Ltd. Because of the accident, he sustained fracture to his right wrist and sustained injury to the fore-head and he is unable to climb trees, thereby affecting his livelihood throughout his life and thus suffered permanent disability. But the Tribunal has not taken into consideration this aspect of the matter while granting compensation. He submits the claimant was bed ridden for three months and has lost his earning. But the Tribunal taking the income of the claimant at Rs.1,000/- per month, granted meagre amount of Rs.3,000/- towards loss of earnings. He contended that for the grievous injury, meagre amount of Rs.15,000/- was granted and for the simple injury, only Rs.2,000/- was granted. He stated that because of the accident, the claimant has been undergoing pain and suffering, but the Tribunal granted only an amount of Rs.10,000/- under the said head and for medicines also, only a meagre amount of Rs.3,000/- was awarded. He stated that no amount was awarded for extra nourishment and loss of amenities. With these averments, he sought to enhance the compensation.

Sri S.A.V.Ratnam, learned Standing Counsel for the insurance company, supporting the impugned order, sought to dismiss the appeal.

In this case it is to be seen that there is no dispute that the accident due to rash and negligent driving of the driver of the offending auto and the insurance policy was in force, but the Tribunal found that at the time of accident nine passengers were traveling and this amounts to violation of policy conditions.

As contended by the learned counsel for the appellant, one of the fellow passengers, who were a bachelor, died in the very same accident and his parents filed claim petition in O.P.No.41 of 2004 on the file of Motor Vehicle Accident Claims Tribunal – cum – (I Additional District Judge), Karimnagar. By award dated 25.02.2006, the Tribunal while awarding compensation, categorically found that the accident occurred due to rash and negligent driving of the driver of the offending auto, who is 1st respondent therein and directed that the insurer is liable to indemnity the 1st respondent – insured. It did not hold that the insured violated the policy conditions. This order was appealed before this court in MA.CMA.NO.1143 of 2005, and this court by order dated 23.03.2015, while noticing this factor that accident occurred due to rash and negligent driving of the driver of offending auto, enhanced the compensation. The insurer has not taken any ground that accident occurred due to violation of policy conditions. In these circumstances, the finding of the Tribunal, making the insurer liable only to the extent of 50 per cent, is liable to be set aside and accordingly set aside and the insurer shall indemnify the insured and both are jointly and severally liable.

Coming to grant of compensation, there is evidence on record to show that the claimant is a toddy tapper and he claims to be earning an amount of Rs.3,000/- per month, which in my considered view, is just and reasonable and his case is that he was bedridden for three months and lost the earnings. The Tribunal also found that the claimant might have taken rest for three months. In these circumstances, for loss of earnings, the amount awarded by the Tribunal at Rs.3,000/-, is enhanced to Rs.9,000/-.

The claimant sustained one grievous injury and one simple injury, for which the Tribunal granted an amount of Rs.15,000/- and Rs.2,000/- respectively, and the same, in my view, warrants no interference.

Further, though the claimant claimed that he became permanently disabled, could not produce any evidence. Hence, the Tribunal is justified in not granting any amount under this head.

For pain and suffering, the Tribunal granted only an amount of Rs.10,000/-. Having regard to the facts and circumstances of the case, in my considered view, requires enhancement and accordingly, under this head, the claimant is granted an amount of Rs.20,000/-. Similarly for medical expenses, the amount of Rs.3,000/- granted by the Tribunal, is enhanced to Rs.9,000/-.

The Tribunal did not grant any amount towards 'extra nourishment' and for 'loss of amenities in life'. Under the said heads, the claimant is granted an amount of Rs.10,000/- each.

Thus, the compensation of Rs.33,000/- granted by the Tribunal, is enhanced to Rs.75,000/- (Rupees seventh five thousand only), (Rs.9,000/- + Rs.15,000/- + Rs.2,000/- + Rs.20,000/- + Rs.9,000/- + Rs.10,000/- + Rs.10,000/- = Rs.75,000/-), with interest at the rate of 7.5 per cent per annum from the date of the petition till the date of payment.

The appeal is accordingly allowed. Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:20—02—2019
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