HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.2090 of 2015

JUDGMENT :

This appeal is filed by the Insurance Company aggrieved of the order and decree dated 20.07.2015 in M.V.O.P.No.246 of 2012 on the file of the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge, Karimnagar.

2. According to the petitioner, on 03.02.2011 the petitioner as pillion rider along with his friend Narla Mahesh were returning to Kothapalli from Kothapalli on Bajaj motorcycle bearing No. AP.15.N.6433, and when they reached near Rekurthy bridge, Karimnagar, one Hero Honda Splendor motorcycle bearing No. AP.15.J.2977 being driven by first respondent came in rash and negligent manner with high speed and dashed their motorcycle from opposite direction, due to which the petitioner sustained injuries on his legs. Immediately he was shifted to Yashoda Hospital, Secunderabad.

3. Respondents 1 and 2 remained ex parte; Respondent No.3 filed counter disputing the manner of accident, nature of

injuries sustained by the petitioner and treatment taken by him.

4. Based on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident had occurred due to rash and negligent driving of Hero Honda Splendor motorcycle bearing No. AP.15.J.2977 by the first respondent?

2. Whether the petitioner is entitled for compensation, if so, to what amount and from whom?

3. To what relief?

5. In order to prove their case, PWs.1 and 2 were examined and Exs.A1 to A19 were marked. On behalf of the respondent No.3, RW-1 was examined and Exs.B1 to B4 were marked.

6. The Tribunal on considering the oral and documentary evidence available on record, partly allowed the O.P., awarding a total compensation of Rs.2,39,524/- along with costs and interest @ 7.5% per annum from the date of petition till the date of realization with a direction to the respondent No.3-Insurance Company to deposit the said amount at first and thereafter recover the same from the second respondent

who is owner of offending vehicle. Aggrieved thereby, the appellant-Insurance Company has filed this appeal.

7. Heard the learned Standing Counsel for the appellant-Insurance Company and the learned counsel for the claimant-respondent No.1 herein. Perused the material available on record.

8. The learned Standing Counsel for the appellant-Insurance Company contended that the decree of the Tribunal is contrary to law, weight of evidence and against the settled principles of law and that the Tribunal grossly erred in believing the charge sheet. Accordingly, prayed to set aside the impugned order in the O.P.

9. The learned counsel for the respondent No.1/claimant contended that the learned Tribunal has awarded just and reasonable compensation and the same needs no interference by this Court.

10. With regard to the manner of accident, except stating that the rider of the motorcycle drove the vehicle in rash and negligent manner and caused the accident, there is no

rebuttal evidence produced by the respondent No.3-Insurance Company in support of their contention. Hence, considering the evidence of PW-1 coupled with documentary evidence available on record, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle.

11. Coming to the quantum of compensation, the Doctor who treated the petitioner was examined as PW-2 stated that the petitioner was admitted in the hospital on 28-02-2011 in emergency condition with post surgery right proximal tibia fracture with common peroneal nerve injury and underwent surgery on 1.3.2011 and he was discharged on 2.3.2011 with advised to take follow up treatment. As per Ex.A12, the petitioner for the first time admitted into Yashoda Hospital on 5.2.2011 and discharged on 7.2.2011 and there he spent an amount of Rs.67,423/-. As per Ex.A8, the petitioner was second time admitted into the hospital on 28.2.2011 and underwent surgery on 1.3.2011 and discharged on 2.3.2011 and he spent an amount of Rs.24,671/-. Therefore, the Tribunal after considering the evidence of PWs.1 and 2 coupled with Exs.A1 to A19 had rightly awarded

compensation of Rs.94,524/- towards treatment and medical expenses, Rs.30,000/- for the injury, Rs.5,000/- towards transport charges, Rs.5,000/- towards better nourishment, Rs.15,000/- towards pain and suffering, Rs.25,000/- towards disability, Rs.15,000/- towards loss of earnings and Rs.50,000/- towards future medical expenses for removal of implants. Thus, there are no valid grounds to interfere with the findings of the Tribunal on this aspect.

12. With regard to the liability, it is contended by the appellant-Insurance Company that the driver of the offending vehicle was not having valid driving license and the police also filed charge sheet against the driver of the offending vehicle for the offence under Section 181 of the Motor Vehicles Act. As per Section 149(2) of the Motor Vehicles Act, 1988, heavy burden lies upon the insurer to prove that the driver of the vehicle had no valid driving license at the time of the accident. The evidence of RW-1 does not establish that the driver of the offending vehicle was having a valid and effective driving license as on the date of the accident or not. But it only discloses the fact that the driver has been prosecuted for not producing the driving license. In that light, the evidence of

RW-1 is not of much assistance to the insurer in order to establish the fact that the driver of the offending vehicle did not possess a valid and effective driving license at the time of the alleged accident. His evidence also does not come to the aid of the insurer to discharge its primary duty to establish that there was breach of terms of the policy. As per the principles laid down by the Apex Court in RUKMANI AND OTHERS v. NEW INDIA ASSURANCE CO. AND OTHERS[1], when the insurer had failed to prove the defence raised in the statement of objections, such a plea cannot be accepted. When the police officer or the records are not summoned from the transport authority to establish the fact that the driver of the offending vehicle was not having a valid and effective driving license, then, under such circumstances, it has to be held that the insurer has failed to discharge its burden. Under these circumstances, the contention of the learned counsel for the appellant/Insurance Company cannot be sustained and it is hereby rejected. Further the Motor Vehicles Act is a beneficial piece of legislation. It has been time and again held that trappings of civil and criminal

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[1] (1998) 9 SCC 160

proceedings cannot be applied in a very strict manner. Therefore, in view of the above discussion, this Court is of the opinion that there are no valid grounds to interfere with the cogent findings given by the Tribunal and the appeal is liable to be dismissed.

13. The appeal is devoid of merit and it is accordingly dismissed.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

Date: 22.09.2022

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