THE HON'BLE JUSTICE G. SRI DEVI

M.A.C.M.A. Nos. 1770 of 2014 & 3747 of 2014

COMMON JUDGMENT:

MACMA.No. 1770 of 2014 is preferred by M/s. Reliance General Insurance Company Limited, respondent No. 2 before the tribunal, challenging the award and decree of the V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad in O.P. No. 1552 of 2010 dated 20.06.2013 on the ground that the compensation granted is exorbitant and excessive etc.

2. Assailing the very same judgment and decree, the claimant preferred M.A.C.M.A. No. 3747 of 2014 seeking enhancement of compensation.

3. For the injuries sustained by the claimant in the accident that occurred on 28.05.2010 involving the Lorry bearing No. AP 11T 5006, owned by respondent No. 1 & insured with respondent No. 2, he laid the O.P. claiming compensation of Rs.6.00 lakhs against the respondents under different heads. While the respondent No. 1 remained ex parte, the respondent No. 2 contested the claim disputing the age, occupation and earnings of the claimants. The learned Tribunal considering the claim and the counter filed by the Insurance Company and on evaluation of oral and documentary evidence, awarded a total

sum of Rs.2,99,000/- towards compensation under different heads.

4. Heard both sides. Perused the material available on record.

5. The learned Standing Counsel for the Insurance Company, appellant in M.A.C.M.A. No. 1770 of 2014 mainly contended that learned Tribunal failed to appreciate the fact that the Insurance Company has no liability to pay compensation for the reason that the driver of the offending vehicle does not possess valid and effective driving license to drive the lorry at the time of the accident. Even the police have filed the charge sheet against the driver for the offence under Section 181 of the Motor Vehicles Act. The tribunal failed to appreciate the evidence of R.W.1 who has specifically deposed that the driver of the offending vehicle was not holding valid driving license at the time of the accident. Therefore, for violation of the conditions of Ex.B. 1 policy, the respondent No. 1, being the owner of the offending vehicle, alone ought to have been directed to pay the compensation. It is alternatively contended that at least the tribunal ought to have directed the insurance company to first pay the compensation and then recover the same from the owner of the offending vehicle.

6. On the other hand, the learned counsel for the claimant (appellant in M.A.C.M.A. No. 3747 of 2014) has contended that the Tribunal did not take into consideration the fractures and other grievous injuries and erroneously granted very meagre amounts towards treatment and medical expenses and attendant charges. The tribunal failed to award any amount towards extra nourishment. As regards the rate of interest, it is contended that 6% interest awarded by the tribunal is meagre and the same needs to be enhanced to 8%.

7. Although the learned Standing Counsel for the Insurance Company vehemently argued that the driver of the offending vehicle was not holding valid licence, no such allegation finds place either in the FIR, Ex.A.1 or in Ex.A.2, charge sheet. Even the Insurance Company has not let in any evidence in this regard. As rightly observed by the tribunal, the Insurance Company did not choose to examine any of the officials from RTO in this regard. In such circumstances, the tribunal has rightly rejected the claim of the Insurance Company that the driver of the offending vehicle was not holding valid driving license and rightly fastened liability jointly and severally upon both the owner and the Insurance Company and the said findings needs no interference by this Court.

8. Coming to the quantum of compensation awarded by the Tribunal, the claimant has suffered fracture injuries such as

fracture of right femur, fracture of right tibia apart from other injuries. For the said fractures, the claimant had to undergo surgery. He was admitted in the hospital as inpatient on 29.05.2010 and discharged on 10.06.2010. As seen from the evidence of P.W.3, doctor, future expenses of Rs.50,000/- was estimated for removal of implants. The evidence of P.W.3 further shows that the claimant was readmitted in the hospital on 30.09.2010 and bone grafting was done for his right femur and was discharged on 01.10.2010. Even prior to that, on 24.06.2010 he was admitted in the hospital for his knee surgery. Considering these circumstances, the tribunal ought to have believed Ex.A.8 which reflects that the claimant paid a sum of Rs.2,82,795/-, under Ex.A.10, Rs.16,518/- and under Ex.A.12, Rs.14,572/-. However, the tribunal considering Ex.A.8, awarded only Rs.2,73,000/- but not Rs.2,82,795/-. Even as per the evidence of P.W.3, the claimant might have spent Rs.25,000/-, if not Rs.50,000/-, as spoken to by P.W.3, for removal of implants. Therefore, this Court is inclined to enhance/award the following amounts under the different heads:

(i) Rs.26,000/- awarded by the tribunal towards pain and suffering, medical attendant and transportation charges is hereby enhanced to Rs.75,000/-;

(ii) Rs.2,73,000/- awarded by the tribunal basing on Ex.A.8 is hereby enhanced to Rs.2,82,795/-;

(iii) Rs.13,536/- is awarded by this Court basing on Ex.A.9 discharge bill;

(iv) Rs.16,518/- is awarded by this Court basing on Ex.A.10 discharge bill;

(v) Rs.25,000/- is awarded by this Court towards future expenses for removal of implants.

Thus, in all, the claimant is entitled for the just compensation of Rs.4,12,849/-.

9. As regards the rate of interest awarded by the Tribunal, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**[1], the interest granted by the Tribunal @ 6% per annum is meager and the same is enhanced to 7.5% per annum on the awarded amount from the date of petition and on the enhanced amount from the date of the order of the tribunal, till the date of realization.

9. In the result, M.A.C.M.A. No. 3747 of 2014 is allowed enhancing the compensation amount of Rs.2,99,000/-, as

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[1] 2013 ACJ 1403 = 2013 (4) ALT 35

awarded by the Tribunal, to Rs.4,12,849/-. The enhanced amount, from the date of the order of the tribunal and also the originally awarded compensation amount, from the date of the petition, shall carry interest at 7.5% p.a. till the date of realization, to be payable by the respondents jointly and severally. Time for deposit of the amount is one month from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same. Consequently, M.A.C.M.A. No. 1770 of 2014 filed by the Insurance Company stands dismissed. There shall be no order as to costs

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

JUSTICE G. SRI DEVI

June 27, 2022
tsr

THE HON'BLE JUSTICE G. SRI DEVI

M.A.C.M.A. Nos. 1770 of 2014 & 3747 of 2014

DATE: 27-06-2022