

THE HON'BLE SRI JUSTICE M.G.PRIYADARSINI

MA.CMA.NO.3419 OF 2014

JUDGMENT

Assailing the judgment and decree dated 03.05.2013 passed by the Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge, Medak at Sangareddy, in MVOP.No.05 of 2011, the Insurance Company, filed the present appeal.

2. The case of the claimant, who is the injured, is that on 16.11.2008, while he was going to Sangareddy on a motorcycle, driven by him, and at about 1.30 p.m., when he reached the limits of Andole village, lorry bearing No. HR-56-A-4577 coming in opposite direction, in a rash and negligent manner, dashed against his motorcycle, as a result, he fell down and sustained fracture injuries. Immediately, he was shifted to Government Hospital, Jogipet, and later he was referred to Care Hospital, Hyderabad, where he underwent surgery and his right leg above knee was amputated. He incurred huge expenditure for his treatment. Earlier to the accident, he was hale and healthy and was working in Vamshi Hospital, Jogipet and earning Rs.6,000/- per month, but because of the accident, he is unable to attend to his work and lost his earnings. Hence, he filed the claim petition

under Section 166 of the Motor Vehicles Act, 1988, claiming an amount of 10,00,000/- towards compensation.

3. The insured as well as insurer of the lorry bearing No. HR 56 A 4577 filed separate counter affidavits denying the claim petition and seeking to dismiss the same.

4. The Tribunal considering the evidence of P.W.1, who is the injured and Ex.A-1 to A-3 and discarding the evidence of R.W.1, who is not an eye witness to the accident, held that the accident occurred due to rash and negligent driving of the driver of the crime lorry. Further, taking the monthly income of the claimant as Rs.3,000/-, and by applying the multiplier of 16, as he was aged 20 years, and taking the disability at 50%, awarded an amount of Rs.3,06,000/- towards loss of earnings due to disability. The Tribunal further awarded an amount of Rs.9,000/- under the head of loss of earnings during the period of treatment, Rs.4,48,475/- towards medical bills marked under Ex.A-7, Rs.35,000/- towards pain and suffering, Rs.10,000/- under the incidental charges and Rs.15,000/- towards loss of future amenities in life. Thus, in all, arrived at Rs.8,23,475/-, but rounded off to Rs.8,23,500/- and granted the said amount with interest at the rate of 8% per annum from the date of the claim petition till the date of

deposit, and made both the insured and the insurer of the crime lorry jointly and severally liable to pay the amount.

5. Assailing the impugned judgment, the insurer – United India Insurance Company filed the present appeal.

6. Learned counsel for the appellant – insurance Company Smt. P.Satya Manjula, submits that the accident in question is a head on collision and hence the apportionment of negligence shall be made, but in the present case, Tribunal has not apportioned the negligence and the same requires to be modified. She submits that driver of the crime lorry was not possessing HGV licence and was possessing LMV licence and hence for not possessing proper licence, the insurance company cannot be made liable. She further submitted that though the insurance company led the evidence of Administrative Officer, A.O., but his evidence has not been considered. She submits that the insured and the insurer of the motorcycle on which the claimant was traveling, was not made party and hence for non-joinder of necessary parties, the claim petition cannot be entertained. She submits that the Tribunal granted interest on the compensation amount at the rate of 8%, which is on the higher side, and hence the same may be reduced. With these averments, she sought to set aside the impugned judgment.

7. On the other hand Sri Nambi Krishna, appearing for the 1st respondent claimant, supporting the impugned judgment, sought for dismissal of the claim petition.

8. In the present case, it is to be noticed that the Tribunal based on the evidence of the claimant, who was injured in the accident, and considering Exs.A-1 to A-3, which are certified copies of FIR, charge sheet and scene of offence panchanama, categorically recorded finding of fact that accident occurred due to rash and negligent driving of the driver of the crime lorry. Though the insurance company examined R.W.1, he is not an eye witness to the accident. Though it is a head on collision, since the accident occurred due to rash and negligent driving of the driver of the crime lorry, the contention of the learned Standing Counsel for the Insurance Company that as it is a head on collision, negligence needs to be apportioned, cannot be sustained. Similarly, in view of the said finding, there is no requirement to implead the insured and the insurer of the motor cycle on which the claimant was traveling.

9. Coming to the dispute with regard to the driving licence, it is be noticed that the Tribunal by examining the endorsement made on Ex.B-2, which is the driving licence of the driver of the crime lorry, found that in the

place of 'LMV Tractor', the words 'tractor' were struck off and that the letters 'LMV-NT' were already there, and that non-striking of the words 'LMV' would mean otherwise i.e., LMV-T. The endorsement to this effect on the driving licence of the driver of the crime vehicle, was not explained by R.W.1. Therefore, the Tribunal considering this circumstance and various judgments of the Apex Court, negated the contention of the insurance company in this regard, and as the driver of the crime vehicle was found responsible for the accident, made both the insured as well as insurer of the crime vehicle as jointly and severally liable to pay the compensation. Having regard to the facts and circumstances of the case, and the finding of the Tribunal, I do not find any reason to interfere with the same, and the contention of the learned counsel for the Insurance Company in this regard is rejected.

10. Now coming to the rate of interest, the Apex Court in the decision reported in **TAMIL NADU STATE ROAD TRANSPORT CORPORATION vs. S.RAJAPRIYA AND OTHERS**¹, granted interest at the rate of 7.5% per cent annum on the compensation amount. This court is also granting interest at the same rate. Hence, the interest granted by the Tribunal at 8% is reduced to 7.5%.

¹ 2005(2) TAC

11. Accordingly, by modifying only the rate of interest from 8% to 7.5% on the compensation amount, the rest of the judgment is confirmed.

12. Thus the appeal is allowed in part by modifying only the rate of interest as indicated above.

13. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

M.G.PRIYADARSINI,J

DATE:19—09—2022
AVS