HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A. No.1776 of 2008

JUDGMENT:

Challenging the dismissal of O.P. No. 341 of 2004, dated 31.08.2007 on the file of the Motor Accidents Claims Tribunal (IV Additional District Judge) (Fast Track Court), Nizamabad, rejecting the claim seeking compensation on account of the injuries sustained by him in the accident that occurred on 22.06.2003, the M.A.C.M.A. No. 1776 of 2008 is preferred by the claimant.

The facts, in issue, are as under:

On 22.06.2003, while the claimant was proceeding to Nizamabad from Anksapoor, along with turmeric bags, in the crime vehicle i.e., Lorry bearing No. AP 25T 1899, owned by the respondent No. 1 & insured with respondent No. 2, and when the lorry reached the outskirts of Sirpoor Village, the driver of the Lorry drove it in a rash and negligent manner and applied sudden brakes, due to which, the claimant dashed against the cabin glasses and sustained injury on head, fracture of left ribs. He spent huge amount towards treatment and sustained permanent disability. Therefore, he laid a claim for Rs.2.00 lakhs towards compensation.

Before the Tribunal, the respondent No.1 remained *ex parte* and the respondent No. 2 filed counter denying the manner in which the accident took place. It was contended that as the claimant travelled in a goods vehicle, he is a gratuitous passenger and therefore, he is not entitled for any compensation from the insurance company.

After analyzing the evidence available on record, the Tribunal dismissed the O.P. holding that the claimant is only a fare paying passenger and therefore, he is not entitled to claim any compensation. Challenging the said finding of the Tribunal, the present appeal is filed by the claimant.

Heard the learned Counsel appearing on either side and perused the record.

Learned Counsel for the appellant/claimant submitted that the findings of the Tribunal which led to the dismissal of the O.P. are erroneous under law. It is submitted that in case of violation of policy conditions, including driver of the offending vehicle not having valid driving licence at the time of accident, gratuitous passenger etc., still the Insurer is under obligation to pay the compensation to the claimant at the first place and shall recover the same from the owner of the vehicle later. In support of his contention, he relied upon the judgment of the Apex Court in ***Manuara Khatun and others v. Rajesh Kumar***

and others[1]. Insofar as the enhancement of compensation is concerned, learned Counsel for the appellant/claimant would submit that considering the medical evidence i.e., P.W.2, doctor and Ex.A.3, wound certificate, the Tribunal ought to have awarded just and reasonable compensation. Therefore, he seeks to set aside the impugned order of the Tribunal by awarding appropriate compensation.

On the other hand, the learned Standing Counsel for the Insurance Company submitted that the crime vehicle was a goods carrier and the claimant was traveling in the vehicle as gratuitous passenger and, therefore, the Tribunal has rightly dismissed the claim of the claimant and the said order does not require any interference by this Court.

As seen from the record, the crime vehicle was a goods carrier. Even according to the evidence of claimant, he was travelling as owner of the goods in the crime vehicle. Therefore, the claimant is a gratuitous passenger, as rightly held by the learned Tribunal. As regards the aspect of payment of compensation to the gratuitous passenger, in ***National Insurance Co. Ltd. V. Saju P.Paul[2],*** the Apex Court took note of entire previous case law on the subject mentioned and examined the question in the context of Section 147 of the

[1] (2017) 4 SCC 796
[2] (2013) 2 SCC 41

Motor Vehicles Act. While allowing the appeal filed by the Insurance Company by reversing the judgment in ***Saju P.Paul v. National Insurance Co. Ltd.***[3] of the High Court, it was held, on facts, that since the victim was traveling in offending vehicle as "gratuitous passenger", the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, the Apex Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

Recently, relying upon the said judgment, the Apex Court in ***Manuara Khatun*** (1 supra) held that the direction to the Insurance Company, being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them to first pay the awarded sum to the claimants and then recover the paid awarded sum from the owner of the offending vehicle in execution proceedings as per the law laid down in Para No.26 of the judgment in ***National Insurance Co. Ltd. V. Saju P.Paul*** (3 supra).

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[3] 2012 ACJ 1852

It is not in dispute that the offending vehicle was insured and Ex.A.4-Insurance Policy clearly indicates that the accident has occurred during the policy period. Therefore, it can be said that the appellant was travelling as a gratuitous passenger in the crime vehicle. In **Anu Bhanvara Vs. Iffco Tokio General Insurance Company Limited[4]**, the Apex Court while dealing with the case of gratuitous passenger directed the insurer to pay the awarded sum to the claimant therein and recover the same from the insured in the same proceedings.

For the aforesaid discussion and in view of the benevolence object of the Motor Vehicles Act, the insurance company is liable to pay the compensation to the claimant at the first instance and then recover the same from the owner of the offending vehicle by invoking the principle "*pay and recover*" as laid down by the Apex Court in **Manuara Khatun v. Rajesh Kr. Singh** (1 supra).

Coming to the quantum of compensation, the Tribunal has determined, a sum of Rs.2,000/- towards loss of earnings; Rs.3,000/- towards transportation and medical expenses; Rs.5,000/- towards pain and suffering; and Rs.5,000/- towards injuries. Admittedly, P.W.2, doctor, deposed that the claimant suffered a fracture of bone and fracture of right ribs 2 & 3 and that both injuries are grievous in nature. Ex.A.3, wound

[4] 2019(5) ALD SC 287

certificate, substantiates the evidence of P.W.2. Therefore, the amounts of Rs.5,000/- and Rs.5,000/- granted by the Tribunal towards pain & suffering and injuries are hereby enhanced to Rs.20,000/- each. The amounts granted by the Tribunal under the other heads are not interfered. Thus, in all the appellant/claimant is entitled for compensation of Rs.45,000/-.

Accordingly, the appeal is partly allowed by granting compensation of Rs.45,000/- i.e., Rs.2,000/- towards loss of earnings; Rs.3,000/- towards Transportation and medical expenses; Rs.20,000/- towards pain and suffering; and Rs.20,000/- towards injuries. The compensation amount shall carry interest @ 7.5% per annum from the date of filing of the O.P. till the date of realization. The 2nd respondent-Insurance Company is directed to deposit the said amount to the credit of the O.P. along with accrued interest within two months from the date of receipt of a copy of this judgment, and then recover the said amount from the 1st respondent-owner. There shall be no order as to costs.

Miscellaneous petitions, if any pending in this appeal, shall stand dismissed.

JUSTICE G. SRI DEVI

02.03.2022
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DATE: 02-03-2022