

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 3440 of 2014

JUDGMENT:

This appeal is filed by the claimant, injured, aggrieved by the award and decree, dated 01.05.2014 made in O.P.No.50 of 2011 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial (for short, the Tribunal).

2. For the sake of convenience, hereinafter, the parties are referred to as per their array before the Tribunal.

3. The minor claimant, represented by his guardian and natural father, filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.1,50,000/- towards compensation for the injuries sustained by the minor claimant in a motor vehicle accident that occurred on 13.04.2010. It is stated that on 13.04.2010 at about 1:00 p.m., while the minor claimant was travelling in Auto bearing No.AP 25 W 1997, owned and driven by respondent No.1 and insured with respondent No.2, due to the rash and negligent driving of the auto by the respondent No. 1, the auto met with an accident on the road situated near B.C. Hostel, Metpalli. As a result thereof, the minor claimant sustained severe injuries and he was

shifted to nearby hospital for first-aid and thereafter he was admitted in Sai Praja Hospital, Metpally, where he took treatment as in-patient and the father of the minor claimant spend huge amount for the treatment. It is further stated that due to hospitalization for several months, the minor claimant lost one academic year. Since the accident occurred due to the rash and negligent driving of respondent No.1, the minor claimant laid the claim for Rs.1,50,000/- against the respondents, who are the driver-cum-owner and insurer of the offending auto.

4. The Tribunal, after considering the claim, counters filed by both the respondents and the evidence, both oral and documentary brought on record, has allowed the O.P. in part awarding a sum of Rs.1,15,000/- towards compensation payable respondent No.1 only while dismissing the claim against respondent No.2-Insurance company as there was breach of policy conditions. Dissatisfied with the quantum of compensation and also exonerating respondent No.2 from its liability, the claimant filed the present appeal.

5. Heard and perused the material available on record.

6. Learned Counsel for the claimant mainly submits that the quantum of compensation awarded by the Tribunal is on lower side. It is further submitted that as per the evidence available on record, the claimant had sustained two grievous and one simple injury, but the Tribunal did not award any amount for the injuries sustained by the claimant and only meager amount of Rs.25,000/- was awarded under the head of pain and suffering. Therefore, it is prayed to enhance the compensation by considering the nature of injuries sustained by the claimant, nature of treatment undergone by him and the amount spent by him. It is further contended that the Tribunal erred in exonerating the Insurance Company from its liability and by invoking the doctrine of 'pay and recovery', the tribunal ought to have directed the insurance company to pay the compensation at the first instance and then recover the same from the owner, respondent No. 1.

7. Learned Standing Counsel appearing for the respondents has contended that considering the nature of injuries sustained by the claimant and the nature of treatment undergone by him, the tribunal has rightly awarded just compensation and the

same needs no interference by this Court. It is further contended that the Tribunal has rightly exonerated the insurance company as there was breach of policy conditions and the same warrants no interference.

8. There is no dispute with regard to the manner of the accident and the rash and negligent driving of the offending vehicle by its driver in causing the accident that resulted in causing injuries to the minor claimant.

9. A perusal of the material on record, as per Ex.A4-discharge summary sheet, the minor claimant has sustained two grievous injuries and one simple injury. However, no amount was awarded by the Tribunal under the head of injuries except awarding an amount of Rs.25,000/- under the head of pain and suffering. Considering the medical evidence and the nature of injuries i.e., two grievous injuries and one simple injury, this Court is inclined to awarded an amount of Rs.40,000/- for the injuries sustained by him i.e., Rs.15,000/- each for two grievous injuries and Rs.10,000/- for simple injury. The other amounts awarded by the Tribunal under the heads of pain and suffering, loss of education, transport charges, medical

expenses, extra nourishment, future medical expenses and loss of amenities, need no interference as they are just and reasonable. Therefore, except the said enhancement, rest of the amounts awarded by the Tribunal remains un-changed.

10. Coming to the aspect of liability of payment of compensation, a perusal of the impugned award would show that R.W.1, employee of the Insurance Company, deposed that as per Ex.X2-driving licence extract, the driver of the crime vehicle was possessing valid and effective non-transport driving licence but he did not possess driving licence to drive auto for the transport purpose.

11. In ***Mukund Dewangan vs. Oriental Insurance Company Limited and others***¹, the Apex Court held that “*the mere fact that the driver who possessed a licence to drive the light motor vehicle did not possess a licence to drive heavy transport vehicle by itself would not be sufficient to hold that the insurance company would be absolved of its liability to pay compensation*”.

¹ (2016) 4 SCC 298

12. In view of the principles laid down by the Apex Court in the judgment referred to above, this Court finds that the Tribunal erred in exonerating the Insurance Company to pay the compensation amount as awarded by the Tribunal and the Insurance Company is liable to pay the compensation awarded by the Tribunal.

13. In the result, the appeal is allowed enhancing the compensation from Rs.1,15,000/- to Rs.1,55,000/- payable by the respondent Nos. 1 and 2 jointly and severally. The enhanced compensation shall carry interest at 7.5% per annum from the date of petition till the date of realization. Time for depositing the amount is two months from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the said amount without furnishing any security. No order as to costs.

Pending Miscellaneous petitions shall stand closed.

JUSTICE M.G. PRIYADARSINI

17.11.2022
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DATE: 17-11-2022