HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A. Nos.2344 of 2007 and 2103 of 2008

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.2344 of 2007 filed by the claimant, seeking enhancement of the compensation and M.A.C.M.A.No.2103 of 2008 filed by the Insurance Company, are directed against the very same judgment and decree, dated 04.04.2007, passed in O.P.No.470 of 2003 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge) (FTC), Nizamabad (for short "the Tribunal").

For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

The claimant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.4,00,000/- for the injuries sustained by him in a motor vehicle accident. It is stated that on 17.12.2002, the claimant along with others were traveling in an auto bearing No.AP 25 U 2123 from Armoor to Nizamabad and when the auto reached Vijaya Public School, Armoor, the driver of the auto drove the auto in a rash and negligent manner with high speed and dashed against the Jeep bearing No.AP 9P 923 and as a result of which, the claimant sustained serious injuries. Since the accident occurred only due to the rash and negligent driving of the driver of the auto, the claimant filed the claim-petition against the respondents 1 and 2, being the owner and insurer of the said Auto.

The 1st respondent-owner of the Auto filed counter stating that the vehicle was insured with the 2nd respondent and if the claimant is entitled for any compensation he has to recover from the 2nd respondent.

The 2nd respondent-Insurance Company filed counter opposing the claim and denying their liability to pay the compensation.

Basing on the above pleadings, the following issues have been framed before the Tribunal:-

1) Whether the accident has taken place due to rash and negligent driving of the vehicle Auto bearing No.AP 25 U 2123 by its driver?
2) Whether the petitioner is entitled for compensation. If so, to what just amount and against whom?
3) To what relief?

During trial, on behalf of the claimant, P.W.1 was examined and got marked Exs.A1 to A6 and Exs.X1 and X2. On behalf of the respondents, R.W.1 was examined and got marked Ex.B1.

After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of driver of the Auto and accordingly, awarded total compensation of Rs.1,10,000/- with interest @ 7.5% per annum. Challenging the same, the present Appeals came to be filed by the claimant and the Insurance Company.

Heard both sides and perused the record.

The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the owner or insurer of the vehicle.

Insofar as the appeal filed by the claimant is concerned, a perusal of Ex.A3 wound certificate, the claimant has sustained four grievous injuries, as such, the claimant is entitled to Rs.80,000/- for the four grievous injuries. Though the claimant claimed Rs.1.00 lakh towards medical expenses, since there are no bills, the Tribunal has rightly discarded the said claim of the petitioner. However, the claimant might have spent some amount towards medical expenses as he sustained four grievous injuries and has undergone operation, therefore, this Court is of the view that the claimant is entitled to Rs.40,000/- towards medical expenses. The record reveals that the Tribunal has rightly awarded Rs.40,000/- under the head of pain and suffering and Rs.21,000/- towards loss of estate and Rs.9,000/- towards transportation and extra nourishment, which needs no interference. Except the enhancement of Rs.80,000/-, rest of the amount awarded by the Tribunal remains un-changed.

Insofar as the appeal filed by the Insurance Company is concerned, this Court is of the view that after taking into consideration the overloading of the auto at the time of accident, with regard to the liability of the Insurance Company, the Tribunal has passed a well reasoned order. Therefore, the finding of the Tribunal that the Insurance Company has to deposit the compensation at the first and later recover from the owner of the offending vehicle warrants no interference.

Accordingly, M.A.C.M.A.No.2344 of 2007 filed by the claimant is hereby allowed in part by enhancing the compensation from Rs.1,10,000/- to Rs.1,90,000/- and M.A.C.M.A.No.2103 of 2008 filed by the Insurance Company is dismissed. The enhanced amount will carry an interest of 7.5% p.a. from the date of passing of award passed by the Tribunal i.e., from 04.04.2007 till the date of realization. The Insurance Company is directed to deposit the said compensation amount within two months from the date of receipt of a copy of this Order and the Insurance Company is entitled to recover the same from the owner of the Auto. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

03.02.2022
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