HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 1775 of 2017

JUDGMENT:

Being dissatisfied with the order and decree passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-VIII Additional District Judge, Warangal, in M.V.O.P.No.1172 of 2012 dated 24.10.2016, United India Insurance Company Limited has filed the present appeal.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. Brief facts of the petitioner's case are that on 12-04-2012 he went to Huzurabad along with his daughter Rajitha to drop her at Huzurabad and while returning on his Hero Honda Pleasure vehicle bearing No. AP 36 AP 0521, he reached near Bhavupet cross road, at that time an Indica car bearing No. AP 05 AN 6790 proceeding from Hanamkonda to Huzurbad in rash and negligent manner with high speed and dashed to his motorcycle, as a result, he fell down from the motorcycle and received injuries. Immediately he was shifted to MGM Hospital in 108 Ambulance and from there he was shifted to

Yashoda Hospital, Secunderabad, where surgery was conducted for fracture injury. He spent more than Rs.3 lakhs for his treatment in various hospitals and is unable to move from bed. Further he has to undergo another surgery which costs more than Rs.1 lakh. Thus, the petitioner claimed compensation of Rs.4,00,000/- under various heads against the respondent Nos.1 to 3, owner, insurer and driver of the offending vehicle respectively.

4. Respondent No.3 remained ex parte. Respondent Nos.1 and 2 filed separate counters disputing the manner of accident, age, avocation and income of the petitioner. Respondent No.1 admitted his ownership of the car bearing No. AP 05 AN 6790 and further contended that the said car was insured with respondent No.1 as on the date of accident. Respondent No.2 further contended that the compensation claimed by the petitioners is highly excessive and prays to dismiss the petition.

5. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.2,61,278/- towards compensation to the claimant against the respondent Nos.1 to 3 jointly

and severally, along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization.

6. Heard the learned Standing Counsel for the appellant-Insurance Company and the learned Counsel for the respondent No.1/claimant. Perused the material available on record.

7. The learned Standing Counsel for the appellant-Insurance Company contended that the decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case; that there was no negligence on the part of the driver of the offending vehicle and the Tribunal has erred in fastening the liability on the appellant-Insurance Company as the driver of the offending vehicle was not having valid driving license at the time of accident and the amount awarded by the tribunal is exorbitant. Accordingly, prayed for setting aside the impugned order in the O.P.

8. The learned Counsel appearing on behalf of respondent No.1-claimant submitted that the Tribunal after considering the oral and documentary evidence available on record, has awarded reasonable

compensation and the same needs no interference by this Court. Therefore, the learned counsel sought for dismissal of the appeal.

9. With regard to the manner of accident, the learned Standing counsel for the Insurance Company pleaded that there was contributory negligence on the part of both the petitioner and the driver of the offending vehicle, except the contention in the counter, no evidence is produced by the Insurance Company to prove the contributory negligence. However, after evaluating the evidence of PWs.1 and 2 coupled with the documentary evidence available on record, the Tribunal rightly held that the accident occurred due to the rash and negligence on the part of the driver of the offending car.

10. With regard to the quantum of compensation is concerned, according to the evidence of PW-2, the Doctor who treated the petitioner, he was admitted in their hospital on 13-04-2012, operated on 13-04-2012 with fixation of both bones of tibia and fibula with place and screw and on the same day skin grafting was done and he was discharged on 21-04-2012. Therefore, considering the nature of injury and the amount spent by him towards his treatment, the tribunal awarded Rs.30,000/- towards pain and suffering for grievous injury,

Rs.1,81,278/- towards medical expenses, Rs.30,000/- towards future medical expenses and Rs.20,000/- towards incidental expenses. Thus in all the petitioner awarded an amount of Rs.2,61,278/- which is just and reasonable.

11. With regard to the liability, it is contended by the learned Standing counsel for the Insurance Company that the driver of the offending vehicle was not having valid driving license and the police also filed charge sheet against the driver of the offending vehicle for the offence under Section 181 of the Motor Vehicles Act. As per Section 149(2) of the Motor Vehicles Act, 1988, heavy burden lies upon the insurer to prove that the driver of the vehicle had no valid driving license at the time of the accident. The evidence of RW-1 does not establish that the driver of the offending vehicle was having a valid and effective driving license as on the date of the accident or not. But it only discloses the fact that the driver has been prosecuted for not producing the driving license. The Insurance Company though filed Exs.B1 to B5, did not file any acknowledgment to show that the respondent Nos.1 and 3 received the notices issued by them. In that light, the evidence of RW-1 is not of much assistance to the insurer in

order to establish the fact that the driver of the offending vehicle did not possess a valid and effective driving license at the time of the alleged accident. This evidence also does not come to the aid of the insurer to discharge its primary duty to establish that there was breach of terms of the policy. As per the principles laid down by the Apex Court in RUKMANI AND OTHERS v. NEW INDIA ASSURANCE CO. AND OTHERS[1], when the insurer had failed to prove the defence raised in the statement of objections, such a plea cannot be accepted. When the police officer or the records are not summoned from the transport authority to establish the fact that the driver of the offending vehicle was not having a valid and effective driving license, then, under such circumstances, it has to be held that the insurer has failed to discharge its burden. Under these circumstances, the contention of the learned counsel for the Insurance Company cannot be sustained and it is hereby rejected. Further the Motor Vehicles Act is a beneficial piece of legislation. It has been time and again held that trappings of civil and criminal proceedings cannot be applied in a very strict manner. Therefore, in view of the above discussion, the the tribunal rightly held that the respondent Nos.1 to 3 being the owner,

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[1] (1998) 9 SCC 160

insurer and driver of the car are jointly and severally liable to pay compensation to the petitioner. Therefore, in view of the above discussion, this Court is of the opinion that there are no valid grounds to interfere with the cogent findings given by the Tribunal and the appeal is liable to be dismissed.

12. In the result, the M.A.C.M.A. is dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M.G.PRIYADARSINI,J

03.02.2023
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