

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.468 of 2017

JUDGMENT :

This appeal is filed by the United India Insurance Company Limited aggrieved of the order and decree dated 15.11.2016 in O.P.No.982 of 2011 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (I Fast Track Court), Nalgonda.

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

3. According to the petitioner, on 28-07-2010 the petitioner along with his brother and sister viz., Shivaraju and Susheela started from Nalgonda and were proceeding towards Hyderabad in an Indica Car bearing No. AP 24 L 5556 and the driver of the car driving the same in a moderate speed and at about 00-30 when they reached the outskirts of Peddakaparthi village, at that time one DCM van bearing No. AP 10 T 5910 came from the opposite direction in a rash and negligent manner at high speed and dashed their car. Due to which the inmates of the car sustained grievous injuries.

According to the petitioner, he was aged 28 years, working as driver and earning Rs.8,000/- per month. Due to the said accident he became permanently disabled. Thus the petitioners claimed compensation of Rs.1,00,000/- under various heads against the respondent Nos.1 and 2, who are the owner and insurer of the DCM van jointly and severally.

4. Respondent No.1 remained ex parte; Respondent No.2 filed counter disputing the manner of accident, age, income, avocation and health condition of the petitioner, nature of injuries sustained by the petitioner and treatment taken by him.

5. In order to prove his case, petitioner was examined himself as PW-1 and Exs.A1 to A3 were marked. On behalf of the respondent No.2, RW-1 was examined and Ex.B1 was marked.

6. The Tribunal on considering the oral and documentary evidence available on record, partly allowed the O.P., awarding a total compensation of Rs.56,000/- along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization against the

respondent Nos.1 and 2 jointly and severally. Aggrieved thereby, the appellant-Insurance Company has filed this appeal.

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

8. The learned Standing Counsel for the appellant-Insurance Company contended that the accident occurred due to the negligence on the part of the driver of Indica car in which the injured was travelling and there is no negligence on the part of the DCM van driver. Further it is contended that the driver of the DCM van was not having valid driving license at the time of accident and as such, he was charge sheeted for the under Section 181 of Motor Vehicles Act. Therefore, prayed to set aside the impugned order in the O.P.

9. The learned counsel for the respondent No.1/claimant contended that though he established his claim by examining himself as PW-1 and also got filed Exs.A1 to A3, the tribunal

awarded meager amount and therefore, seeking enhancement of compensation.

10. With regard to the manner of accident, except stating that the accident occurred due to the rash and negligent driving of the driver of the DCM van, there is no rebuttal evidence produced by the respondent No.2-Insurance Company in support of their contention. However, after evaluating the evidence of PW-1 coupled with documentary evidence available on record, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle.

11. Coming to the quantum of compensation, according to the petitioner, he sustained i) grievous injury on right eye lid, ii) grievous injury on inner side of upper lip, iii) laceration below lower lip, iv) grievous injury on chin, v) abrasion on chin, vi) laceration on caruncle of the nose, vii) abrasion on left cheek and other injuries all over the body. Ex.A2 certified copy of Medical Certificate issued by Kamineni Institute of Medical Sciences, Narketpally shows that he sustained two grievous injuries and five simple injuries. Therefore,

considering the nature of injuries sustained by the petitioner and the treatment taken by him, the tribunal awarded Rs.30,000/- for two grievous injuries @ Rs.15,000/- for each grievous injury, Rs.10,000/- for five simple injuries @ Rs.2,000/- for each simple injury, Rs.8,000/- towards medicines and investigation charges, Rs.1,000/- towards transport charges, Rs.2,000/- towards food and extra nourishment charges and Rs.5,000/- towards loss of earnings. Thus in all the petitioner awarded Rs.56,000/-, which is just and reasonable. Therefore, there is no reason to interfere with the findings of the tribunal in this aspect.

12. With regard to the liability, it is contended by the appellant-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. However, except examining the Administrative Officer of their Company, they have not adduced any evidence or examined the concerned Regional Transport Authority officials to show that the driver of the DCM van was not holding valid and effective driving license. It is also pertinent to state that

neither the petitioner nor the respondents did not file the charge sheet to show that the driver of the offending vehicle was prosecuted for the offence under Section 181 of Motor Vehicles Act. Therefore, it cannot be concluded that the charge sheet has been filed against the driver of DCM van. Under these circumstances, the contention of the learned counsel for the appellant/Insurance Company cannot be sustained and it is hereby rejected. 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.

13. The appeal is devoid of merit and it is accordingly dismissed.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

06.02.2023

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