(2022) 01 TEL CK 0002

In the Telangana High Court

Case No : M.A.C.M.A.Nos. 1260, 1626 Of 2006

B.Bhooma Goud APPELLANT

Vs

M/S.Tata Press Limited Anr RESPONDENT

Date of Decision : 04-01-2022

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2022) 01 TEL CK 0002

Hon'ble Judges : G. Sri Devi, J

Bench : Single Bench

Advocate : Azar Sravan Kumar

Final Decision : Allowed/Dismissed

Judgement

,,,

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.1260 of 2006 filed by the claimant seeking enhancement of,,,

compensation and M.A.C.M.A.No.1626 of 2006 filed by the New India Insurance Company Limited, are directed against the very same judgment",,,

and decree, dated 30.01.2006, passed in O.P.No.1504 of 2001 on the file of the Motor Accidents Claims Tribunal (District Judge), Nizamabad.",,,

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

The brief facts of the case are that on 29.03.2001 at about 5.30 P.M., the claimant, one Dr.Ashok Reddy and the driver of the Fiat Car bearing",,,

No.DL-2/CE-4245 were traveling in the said Car from Hyderabad to Nizamabad and when they reached Ramayampet Village, the driver of the Car",,,

drove it in a rash and negligent manner with high speed and hit a tamarind tree situated adjacent to the road, due to which, the claimant and other",,, inmates of the Car sustained injuries. The claimant sustained compound fracture to right leg and six ribs were fractured and also received injuries to,,,

head, both hands and both legs. He spent Rs.75,000/- for his treatment. Therefore, the claimant filed the above O.P. under Section 166 of the Motor",,,

Vehicles Act, claiming compensation of Rs.4,00,000/-.",,,

The 1st respondent-owner of the Fiat Car filed written statement denying the averments of the petition including the mode and manner of the accident,",,,

age, income and vocation of the claimant and also the treatment taken by him. It is further stated that the person, who drove the Car, was holding valid",,,

driving licence and the Car was insured with the 2nd respondent and that there is no liability on the part of the 1st respondent as per the terms and,,,

conditions of the policy. It is also stated that the claim is highly excessive, arbitrary and out of all proportions and prayed to dismiss the same.",,,

The 2nd respondent-Insurance Company filed written statement denying the averments of the claim-petition, involvement of the Car in the accident,",,,

manner in which the accident took place, age, occupation and income of the claimant, nature of injuries sustained by him and also the expenditure",,,

incurred for his treatment. It is further denied that the person, who drove the Car, was holding valid driving licence at the time of accident. It is also",,,

denied that the Car was insured with the Insurance Company covering the risk of the passengers involved in the accident and contended that the,,,

owner of the Car has not intimated the Insurance Company about the accident. It is further contended that unless it is proved that the claimant was,,,

involved in the accident and the said Car was insured with the Insurance Company and the person, who drove the vehicle at the time of accident, was",,,

holding valid driving licence, the Insurance Company is not liable to pay compensation and prayed to dismiss the petition.",,,

Basing on the above pleadings, the Tribunal framed the following issues:",,,

1) Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No.DL-2/CE-4245 by its driver?,,,

2) Whether the claimant 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.Ws.1 and 2 were examined and Exs.A1 to A7, Ex.C1 and Ex.X1 were marked. On behalf of the",,, respondents, no oral evidence was adduced, but Exs.B1 to B5 were marked.",,,

After considering both oral and documentary evidence available on record, the Tribunal came to the conclusion that the accident occurred due to the",,,

rash and negligent driving of the driver of the Fiat Car and accordingly awarded total compensation of Rs.1,19,708/- under various heads, with interest",,,

@ 7.5% per annum.,,,

Challenging the same, the present Appeals came to be filed by the claimant and Insurance Company.",,,

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

The main ground urged by the learned Counsel for the claimant is that the compensation awarded by the Tribunal is on lower side. Though the,,,

claimant has spent Rs.3,00,000/- towards medical treatment, the Tribunal has awarded only a sum of Rs.64,708/-. It is also contended that though",,,

P.W.2 has stated that the claimant has sustained 40% disability, without considering the same, the Tribunal has awarded only Rs.50,000/- towards",,,

disability. It is further contended that amount awarded under the head of pain and suffering at Rs.5,000/- is meager as the claimant took treatment for",,,

a period of four months. It is also contended that the Tribunal ought to have awarded adequate amount for future treatment as the claimant has to,,,

undergo another operation for removal of the plates and screws. Therefore, he prayed to enhance the compensation awarded by the Tribunal.",,,

Per contra, learned Counsel appearing for the Insurance Company submits that the claimant was an inmate of a private car and the risk of such",,,

person is not covered by the policy since it is an â??Act Policyâ??. In order to substantiate the said fact, he relied upon the decision of the Apex",,,

Court in Ramkhiladi and another v. United India Insurance Co. Ltd. And another 2020 ACJ 27. It is further contended that the claimant is not a third,,,

party, but he was an inmate of the car and as the policy is an â??Act Policyâ??, the insurer is not liable to indemnify the owner of the vehicle.",,,

Therefore, prayed to allow the appeal filed by the Insurance Company by exonerating the liability of the insurance company.",,,

A perusal of the material available on record, the accident in question is not in dispute, so also the involvement of the offending vehicle insured with",,,

the insurer.,,,

In order to award compensation in case of personal injuries, the Apex Court in Raj Kumar Vs. Ajay Kumar and another MACD 2011 (SC) 33 held as",,,

under:,,,

â??5. The heads under which compensation is awarded in personal injury cases are the following :,,,

Pecuniary damages (Special Damages),,,

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.",,,

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:",,,

(a) Loss of earning during the period of treatment;,,,

(b) Loss of future earnings on account of permanent disability.,,,

Sl.

No.",Name of Head,"AwardedÂ Â Â Â Â Â by Tribunal

Rs.Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â

Ps.","Awarded by this Court

Rs.Â Â Â Â Â Â Â Â Â Â Â Â Â

Ps.

1.,Towards disability,"50,000.00","2,16,000.00

2.,Attendant charges,--,"2,000.00

3.,Extra nourishment,--,"5,000.00

4.,Transportation,---,"5,000.00

5.,Pain and suffering,"5,000.00","20,000.00

6.,Medical Expenses,"64,708.00","64,708.00

,TOTAL,"1,19,708.00","3,12,708.00

