
(2014) 03 AP CK 0036

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. Nos. 1297 and 1977 of 2007

Y. Ranga Rao

APPELLANT

Vs

Divisional Engineer

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 11(i), 166

Citation : (2014) 03 AP CK 0036

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : K. Maheswara Rao and V. Srinivas, Advocate for the Appellant; V. Srinivasa Rao and K. Maheswara Rao, Advocate for the Respondent

Judgement

B. Siva Sankara Rao, J.—M.A.C.M.A. No. 1297 of 2007 filed by the claimant and M.A.C.M.A. No. 1977 of 2007 filed by the 2nd respondent-insurer against the order/award in M.V.O.P. No. 445 of 2002 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, Anantapur (for short, "Tribunal") awarding compensation of Rs. 3,85,000/- with interest at 9% p.a. against the respondents 1 and 2 jointly and severally against the claim of Rs. 5,00,000/- in the claim petition u/s 166 of the Motor Vehicle Act, 1988 (for short, "the Act").

2. Heard Sri V. Srinivasa Rao, the learned standing counsel for the insurance company and Sri K. Maheswara Rao, learned counsel for the claimant. The respondent Nos. 2 and 3 did not chosen to appear having contested through advocate before the Tribunal. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The contentions in the grounds of appeal as well as oral submissions by the appellant-claimant are that the award of the Tribunal is unjust as the compensation awarded is utterly low instead of awarding just compensation for the 60% permanent disability suffered besides pain and sufferance from the injuries, loss of earnings, medical and transport expenses, extra nourishment,

attendant charges etc, that was not properly taken into consideration. The counsel for the claimant in both the appeals reiterated the same. It is the contention of the learned counsel for the insurance company that the Tribunal went wrong in fixing joint liability against the insurer even the claimant neither employee under W.C. Act nor third party as laid down by the Apex Court in *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, . The other contention is that the quantum of compensation awarded is excessive and exorbitant to reduce.

4. Now the points that arise for consideration in the appeal are:

1. Whether the compensation awarded by Tribunal is unjust and went wrong in fixing joint liability against the insurer to compensate the injured claimant and if so, the award of the Tribunal to set aside and with what observations?

2. To what result?

POINT No. 1:

5. There is no dispute on the manner of accident, but for disputing liability of the insurer in the appeal and quantum of compensation as low in the appeal of claimant. Coming to decide the liability of insurer the principle of law laid down in that expression of the apex Court in *Meena Warial (supra)* was prior to the IRDA regulation dated 16.11.2009 (reference No. IRDA/NL/CIR/F&U/073/11/2009), which speaks liability of the insurance company in respect of occupant of private car and also pillion rider in a two wheeler under standard motor package policy that also being called comprehensive policy. It refers Section 11(i) of the wording of "for private car and two wheeler under the erstwhile India Motor Tariff and refers the two earlier circulars of the tariff advisory committee on the subject one is circular M.V. No. 1 of 1978 dated 18.03.1978 regarding occupants carried in a private car effective from 25.03.1977 and second one is MOT/GEN/10 dated 02.06.1986 regarding pillion rider in a two wheeler effective from the date of the circular. It further speaks that above circulars make it clear that the insurer's liability in respect of occupants carried in a private car and pillion rider carried on two wheeler is covered under the standard motor package policy.... All general insurers are advised to adhere to the aforesaid circulars and any non-compliance of the same would be viewed seriously by the authority. This is issued with approval of the competent authority".

6. In fact in *Meena Warial (supra)* for the death of the Regional Manager of the Company, Mr. Warial, of the car owned by the company which dashed against a tree for the negligent driving of the driver in which deceased was passenger from the driver of the car alleged F.I.R. insurer contended of policy did not cover risk of employee or the owner who was driving the car while attending the company business as deceased was not a third party in terms of the policy and the Act did not provide statutory coverage of such person and there was no any special contract and deceased did not possess driving licence and what the Tribunal held of car was driven by deceased at the time of accident with no licence to exempt

the insurance company and also from the policy did not cover the risk, for not third party. What the High Court held in allowing the appeal following National Insurance Co. Ltd. Vs. Swaran Singh and Others, of the non possessing of valid licence will not exonerate the insurer. Against the High Court's expression contra to the Tribunal's expression on appeal before the Apex Court, it was answered that the insurer is not liable to indemnify the insured for pay and recovery even when the deceased is not a third party within the meaning of the Act and not even workman under W.C. Act for the compulsory coverage of the risk under the Act and for no special contract to make the insurer liable. Apart from the circular supra referred in the IRDA regulation not brought to the notice of the Honourable Apex Court, for consideration saying the facts in the present case are entirely different as the policy is B-policy comprehensive that covers the risk of the employee also apart from employee or any other occupant of the private use vehicle under the IRDA regulation supra when clearly speaks referring to the earlier circular dated 18.03.1978 that came into force from 25.03.1977 that to be complied, where the policy is a standard motor package policy or comprehensive policy the insurer cannot avoid the liability by invoking the principle laid down in Meena Warial (supra).

7. When such is the case even coming to the quantum of compensation what the Tribunal awarded of Rs. 3,85,000/- in all from 60% disability even taken from the apex Court's expression in Raj Kumar Vs. Ajay Kumar and Another, in the absence of monetary loss on earning capacity, the fixed sum to be awarded and not on multiplier method, as even after superannuation he has to attend some avocation of his own that also part of the disability for remaining part of life after superannuation to consider apart from the 60% permanent disability effects the loss of amenities in life and that even taken into consideration from the age of the injured claimant about 50 years from the lumpsum awarded of Rs. 1,75,000/- for the permanent disability and for the pain and sufferance of the multiple grievous injuries including fractures and Rs. 2,10,000/- for medical expenses and treatment neither requires reduction nor enhancement but for confirming the same.

8. However, coming to the rate of interest, what the Tribunal awarded of 9% p.a. is highly excessive though not to reduce to 6% p.a. as contended by the insurer relying upon Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , 7.5% is just vide decision in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, and Rajesh and Others Vs. Rajbir Singh and Others, . Accordingly point No. 1 is answered.

POINT No. 2:

M.A.C.M.A. NO. 1977 OF 2007

9. In the result, the appeal is dismissed. There shall be no order as to costs.

M.A.C.M.A. NO. 1297 OF 2007

10. In the result, the appeal is partly allowed while modifying the rate of interest from 9% p.a. to 7.5% p.a. There shall be no order as to costs.

11. Miscellaneous petitions, if any pending in this appeal, shall stand closed.