HON'BLE SRI JUSTICE R.KANTHA RAO

C.M.A.No.3950 of 2003
AND
C.M.A.No.1008 of 2003

DATE:29.08.2011

C.M.A.No.3950 of 2003

BETWEEN:

Suddala Gattaiah …Appellant

And

Nethetla Komuraiah and
another

..Respondents

C.M.A.No.1008 of 2003

BETWEEN:

M/s. United India Insurance Co.Ltd. Br.NTPC, Karimnagar

…Appellant

And

Suddala Gattaiah and
another

..Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

C.M.A.No.3950 of 2003
AND
C.M.A.No.1008 of 2003

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COMMON JUDGMENT:

These two appeals arise out of the order dated 25.07.2002 passed by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, at Karimnagar in O.P.No. 446 of 1998.

2. I have heard the learned counsel appearing for the appellant-Insurance Company and the learned counsel appearing for the respondents in both the appeals.

3. Since both the appeals arise out of the order passed by the Tribunal below in O.P.No.446 of 1998, they are disposed of by the following common judgment.

4. The appellant/claimant in C.M.A.No.3950 of 2003 was a coal filler in 7-B incline, SCC Ltd., Godavarikhani. He was aged 37 years on the date of the accident and was said to be earning Rs.7,000/- per month. On 27.09.1997 while the claimant was proceeding on his bicycle at about 4.00 p.m. was hit by a scooter bearing No.AP-15-G-3485 driven by the first respondent-rider in the claim petition, he received fracture to the left leg and also some other severe injuries on the body. Soon-after the accident, he was shifted to

Government Area Hospital, SCC Ltd., Godavarikhani and he was treated there for three months as inpatient and skin grafting was done. From there he was shifted to SCC Ltd. and was treated there also for some time. The fracture to the left leg resulted in shortening of the leg and there was also dislocation of left knee joint. After surgery, he was referred to the Medical Board, Kothagudem for assessment of his fitness to continue in the job. The medical board declared him unfit to work as coal filler. According to the medical board, the claimant was unable to squat on the ground, there was weakness of muscles of lower limb, he was also not able to climb the steps and there was also foot drop including the deformity of great toe. Ultimately, considering him not fit to work as coal filler, the organization removed him from the job. He filed a claim petition before the Tribunal below under Section 166 of the Motor Vehicles Act seeking compensation of Rs.8 lakhs. The learned Tribunal after making enquiry into the claim, awarded compensation of Rs.2,42,000/- with interest at 9% per annum from the date of the petition till the date of realization holding the appellant-insurance company and the second respondent-owner of the vehicle jointly and severally liable to pay the compensation.

5. Challenging the said order, the insurance company filed C.M.A.No.1008 of 2003 contending that the Tribunal below went wrong in holding that the insurance company is liable to pay compensation to the claimant and also that the compensation granted by the Tribunal is on higher side.

6. On the other hand, the claimant filed C.M.A.No.3950 of 2003 contending that the compensation has not been properly computed, it is very low, and not just ad reasonable. Thus, he seeks enhancement of compensation in the appeal filed by him.

7. The questions therefore would arise for consideration in these two appeals are whether the appellant insurance company is liable to pay compensation to the claimant; and whether the compensation granted by the Tribunal is just and reasonable.

8. As regards the first question, basing on the evidence before it, the learned Tribunal recorded a finding that the accident was due to rash and negligent driving of the person (first respondent before the Tribunal) who was riding the scooter bearing No. AP-15-G-3485 which hit the claimant. The insurance company contended before the Tribunal that as per Ex.B-2 letter issued by R.T.A. the first respondent before the Tribunal was only having a license to drive light motor vehicle at relevant time, but he had no valid driving licence to drive the two wheeler. The learned Tribunal having arrived at a positive finding that basing on the evidence of RW-1 that the first respondent before the Tribunal was having only licence to drive the four wheeler but not scooter, took an erroneous view that first respondent before the Tribunal was not disqualified to drive the scooter when he was possessing a driving licence to drive the light motor vehicle. The skills required for driving four wheeler and two wheeler are altogether different. Merely because a person possess a driving licence to drive four wheeler, cannot be said to be equipped with the driving of the two wheeler. Apart from trying to sustain the finding of the Tribunal below, the learned counsel appearing for the claimant contends that the insurance company except in the present case did not adduce any evidence showing that the owner of the vehicle willfully and deliberately allowed first respondent to drive the scooter and in the absence of any such proof placed on record by the insurance company, it cannot disown its liability to pay compensation. I see no

force in the said contention. If really the first respondent was having a licence to drive two wheeler, he ought to have produced the same before the Tribunal or at least the owner could have summoned him and examined him on his behalf as a witness, but the owner remained *ex parte*. Since the first respondent before the Tribunal below did not have licence to drive the two wheeler, it could not have been possible for the appellant-insurance company to adduce positive evidence on that behalf. Further, the Tribunal also recorded a specific finding to the effect that the first respondent before it was not having driving licence to drive two wheeler but held that despite the said fact as he was having valid driving licence to drive the four wheeler he is not disqualified from driving the two wheeler which finding is totally erroneous and contrary to law.

9. However, in the instant case, the claimant is a third party. A duty is cast on the insurance company as per the provisions of Section 149 of the Motor Vehicles Act to satisfy the decrees and awards passed by the Tribunals constituted under the Act in favour of the third parties. Therefore, in this appeal, the finding of the Tribunal below that the insurance company is liable to pay compensation to the claimant is set aside and it is held that the appellant-insurance company is not liable to pay compensation and the owner of the offending vehicle alone is liable to pay compensation. Further, in view of the settled legal position aforesaid, the insurance company is directed to satisfy the award in the first instance in favour of the appellant who is an innocent third party and then it may recover the amount paid from the owner of the vehicle without bringing any fresh suit.

10. The other question relates to the quantum of compensation. There is no dispute about the fact that the claimant was aged 37 years

on the date of the accident and he was working as coal filler. According to him, his salary was Rs.7000/- per month on the date of the accident. Exs.A-5 & A-8 salary certificates also reveal that his salary was Rs.7,819/- per month. Since the nature of the duties of the claimant are that of a labourer and are being paid on daily basis, I am not inclined to add any amount towards his future prospects. However, the income stated by him in the claim petition can be considered to be the aggregate income and the same can be taken for the purpose of computing compensation. The evidence of PW-2, the doctor discloses that the claimant sustained permanent partial disability and on his being declared as invalid by the medical board he was removed from services by the SCC Limited. PW-3, the Colliery Manager also stated in his evidence before the Tribunal below that the medical board declared the claimant unfit as per Ex.A-6 and basing on that he was removed from service. He, however, admitted in his evidence that for the persons who sustain disability, the SCC Ltd. generally provides alternative employment and such employment is called surface job. This witness stated that as the claimant was unable to walk properly and is not able to squat on the ground, he was also not given the surface job. Under these circumstances, the learned Tribunal below considered the disability as total for the purpose of computing compensation. The Tribunal, however, committed a grave error in considering the income of the claimant at Rs.1500/- per month. When there is positive evidence forthcoming showing the income of the injured, the Tribunal ought not to have taken the income of the non-earning persons mentioned in the Second Schedule. The Tribunal in my view should have considered the income of the injured at Rs.7,000/- per month for the purpose of computing compensation. The learned Tribunal committed a further mistake in deducting 1/3rd of the

income towards personal and living expenditure of the claimant. In personal injury cases, no such deduction shall be made. I am also not in acceptance with the view taken by the Tribunal that the disability of the claimant has to be considered as total. Even though the claimant was removed from job in SCC Ltd, he can secure some alternative job to suit his condition and the disability spoken by PW-2, the doctor does not indicate that it is 100%. Considering the evidence of PW-2, the doctor above referred, I am of the view that for the purpose of computing the compensation, the functional disability caused to the claimant in relation to his earning capacity can be taken at 50%.

11. The monthly income of the claimant is Rs.7,000/-, his annual income is Rs.84,000/-, the multiplier relevant to the age of the claimant as per the judgment in **SARALA VARMA AND OTHERS v DELHI TRANSPORT CORPORATION AND ANOTHER**[1] is 16. The loss of earnings of the claimant comes to Rs.84,000/- x 16 x 50 divided by 100 = Rs.6,72,000/-. Since the compensation is granted towards loss of earnings, basing on the disability sustained by him, no separate compensation can be granted for the injuries sustained by the claimant which ultimately resulted in permanent disability. This apart, the claimant can be granted an amount of Rs.20,000/- towards pain and suffering and a further sum of Rs.10,000/- towards loss of amenities in life. In all, the claimant is granted an amount of Rs.7,02,000/-. The interest granted @ 9% per annum being on higher side is reduced to 7.5% per annum from the date of the petition till the date of realization. The enhancement, therefore, would be Rs.7,02,000/- minus R.2,42,000/- = Rs.4,60,000/-.

12. In the result, the claimant-appellant in C.M.A.No.3950 of 2003 is

granted compensation of Rs.7,02,000/- with interest @ 7.5% per annum from the date of the petition till the date of realization. The appellant-insurance company is not liable to pay compensation to the claimant. However, it is directed to pay the entire compensation together with interest to the claimant in the first instance and then it may recover the amount from the owner of the offending vehicle.

13. To the extent indicated above, the order passed by the Tribunal below is modified. Both the appeals are partly allowed. There shall be no order as to costs.

Date:29.08.2012 **R. KANTHA RAO, J**

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THE HON'BLE MR JUSTICE R. KANTHA RAO

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C.M.A.No.3950 of 2003

AND

C.M.A.No.1008 of 2003

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[1] 2009 ACJ 1298