

Satyanarayan Vs. Rameshwar and anr.

Satyanarayan Vs. Rameshwar and anr.

SooperKanoon Citation : sooperkanoon.com/511175

Court : Madhya Pradesh

Decided On : Feb-19-2008

Reported in : 2009ACJ1467

Judge : N.K. Mody, J.

Appellant : Satyanarayan

Respondent : Rameshwar and anr.

Judgement :

N.K. Mody, J.

1. Being aggrieved by the award dated 30.4.2007 passed by Twelfth Motor Accidents Claims Tribunal, Indore in Claim Case No. 137 of 2005 whereby the claim petition filed by the appellant on account of injuries sustained by him in motor accident was allowed and a sum of Rs. 48,430 was awarded and respondent No. 2 was exonerated, the present appeal has been filed.

2. Short facts of the case are that the appellant filed a claim petition alleging that on 13.4.2005 appellant was going on a motorbike bearing registration No. MP 09-LG 3229 as pillion rider. It was alleged that said motorbike was owned and driven by respondent No. 1 and insured with the respondent No. 2. It was alleged that said motorbike met with accident with unknown motorbike, with the result appellant sustained fracture of tibia and fibula in right leg. Appellant was hospitalised at

Verma Union Hospital from 13.4.2005 to 29.4.2005 where appellant was operated and rod was inserted. Medical evidence was adduced according to which permanent disability was to the extent of 14 per cent. Further case of the appellant was for awarding of compensation under Section 163-A of the Motor Vehicles Act. The claim petition was contested by respondent No. 2 on various grounds including on the ground that the respondent No. 2 is not liable for payment of compensation.

3. After framing of issues and recording of evidence, learned Tribunal allowed the claim petition and awarded a sum of Rs. 48,430 break-up of which is as under:

Towards permanent disability Rs. 25,200
Towards pain and suffering Rs. 5,000
Towards medical expenses Rs. 3,230
Towards hospital expenses Rs. 15,000

4. Learned Tribunal further held that since the appellant was pillion rider, therefore, risk of pillion rider is not covered under the policy, hence respondent No. 2 insurance company is not liable for payment of compensation.

5. Learned Counsel for the appellant submits that the total expenditure incurred by the appellant was Rs. 17,000 but only Rs. 15,000 were awarded on account of hospital expenses assigning the reason that as per Second Schedule to the Motor Vehicles Act, in a case filed under Section 163-A of the Motor Vehicles Act, the maximum amount which can be paid is Rs. 15,000 as one time payment. Learned Counsel further submits that no amount has been awarded in other conventional heads such as on account of loss of wages when the appellant was under treatment, expenses incurred on attendants, special diet and transport expenses. It is submitted that learned court below committed error in exonerating the respondent No. 2 from its liability. It is submitted that it was not the case of the respondent No. 2 in the pleadings that the respondent No. 2 is not liable for payment of compensation as appellant was pillion rider and risk of pillion rider is not covered under the policy. Learned Counsel submits that to prove this fact neither issue was framed nor evidence was led by the respondent No. 2. Reliance was placed on a decision by a Division Bench of this Court in the matter of United India Insurance Co. Ltd. v. Saroj Bai : 2008 ACJ 1063 (MP), wherein plea raised by the insurance company for exoneration on the ground that claimant is pillion

rider was rejected on the ground that insurance company did not raise the plea that it was not liable to compensate the claimant as the risk of pillion rider was not covered. In the appeal memo also it was not mentioned that the risk of pillion rider was not covered. In absence of proper pleadings in this regard it cannot be conceived that the insurance company could escape from its liability.

6. Learned Counsel for respondent No. 2 submits that amount awarded is just and proper and no case for enhancement is made out. So far as exoneration of respondent No. 2 is concerned, the learned Counsel submits that policy is on record which is marked as Exh. D1. The policy was admitted by the appellant. In the facts and circumstances of the case, no further evidence was required to be adduced to the effect that respondent No. 2 was not liable for payment of compensation. Reliance was placed on a decision in the matter of *United India Insurance Co. Ltd. v. Tilak Singh* : 2006 ACJ 1441 (SC), wherein it was held that in case of death of pillion rider on scooter which met with an accident and scooter was insured under 'Act only' policy which did not contain any endorsement on payment of additional premium, the insurance company cannot be held liable.

7. From perusal of record, it is evident that in the written statement, no plea was taken by the respondent No. 2 to the effect that insurance company was not liable for payment of compensation as policy was issued under the Act and appellant was pillion rider. In view of this, this Court is of the opinion that learned Tribunal committed error in exonerating the respondent No. 2. So far as amount of compensation is concerned, it appears that on account of loss of wages, expenses incurred on attendants, special diet and transport expenses no amount has been awarded. In view of this, a case of enhancement is made out and the appellant shall be further entitled for a sum of Rs. 11,570 to make it round figure of Rs. 60,000. So far as the plea regarding medical expenses is concerned, maximum payment can be made of Rs. 15,000 at one time. The bill, Exh. P17 is of Rs. 17,000. Learned Tribunal has taken into consideration other bills and awarded Rs. 3,230 for medical expenses and Rs. 15,000 towards hospital expenses, therefore, no illegality has been committed by learned Tribunal in that regard.

8. In view of this, appeal filed by the appellant is allowed in part. The findings relating to exoneration of respondent No. 2 is set aside. Appellant shall be entitled to a sum of Rs. 60,000 instead of Rs. 48,430. The enhanced amount of Rs. 11,570 shall carry interest at the rate of 7.5 per cent from the date of application.

9. With the aforesaid modification, the appeal stands disposed of. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com