

(2014) 11 AP CK 0049

Andhra Pradesh High Court

Case No: M.A.C.M.A. No. 2682 of 2005

National Insurance Company
Limited

APPELLANT

Vs

Sadulla and Others

RESPONDENT

Date of Decision: Nov. 6, 2014

Citation: (2015) 1 AnWR 1005

Hon'ble Judges: B. Chandra Kumar, J

Bench: Single Bench

Advocate: N.S. Bhaskara Rao, Counsel, Advocate for the Appellant; C. Pratap Reddy,
Counsel, Advocate for the Respondent;

Judgement

B. Chandra Kumar, J.

1. This appeal is filed by the National Insurance Company Limited challenging the award dated 09-06-2005 passed in M.V.O.P. No. 336 of 2004 by the II Additional District and Sessions Judge, (Fast Track Court) Medak at Sangareddy, whereby and whereunder the Tribunal awarded compensation of ` 1,70,000/- out of the total claim of ` 2,00,000/-. The parties hereinafter will be referred to as they are arrayed before the Tribunal for the sake of convenience.

2. The injured filed claim petition claiming compensation for the injury sustained by him. Since the quantum of compensation and liability are in question, there is no need to discuss other aspects.

3. The main contention of the learned counsel for the appellant is that the driver of the auto was not having valid driving license. Therefore, the Insurance Company is not liable to indemnify the injured. It is his next submission that the injured did not obtain disability certificate from the competent Medical Board. Therefore, the Tribunal committed error in accepting the disability certificate under Ex. A.6 issued by PW.2 who is Orthopaedic, Gandhi Hospital, Hyderabad. As far as the issue of violation of terms and conditions of the policy are concerned, it has to be seen that

the injured is a third party and the Insurance Company has to pay the amount to the claimant and then may recover the same from the owner of the vehicle. Since it appears that the evidence of R.W.1 who is examined on behalf of National Insurance Company proves that the driver of the auto was not having valid driving license. So, it is clear that the Insurance Company can recover the amount from the owner of the vehicle. Therefore, this order and decree can be treated as an order and decree passed against the owner of the vehicle and without initiating any other proceedings, the Insurance Company may recover the amount paid by it to the claimant from the owner of the vehicle. As far as second issue of disability is concerned, it is admitted fact that PW.2 issued disability certificate. PW.2 is Orthopaedic from Gandhi Hospital. In fact in case of injuries what has to be seen is the nature of injuries and the period of treatment, disability if any sustained by the claimant. After completion of the treatment, the Doctor has to take X-ray and examine the entire medical record and assess whether there is proper union of the bones or whether there is mal-union and stiffness. He must indicate the percentage of disability particularly with regard to functional disability having regard to the nature of work being done by the injured prior to the date of accident. It is not necessary that in each and every case, the Medical Board should issue disability certificate. Of course, it is better if the injured obtains disability certificate from the Medical Board. But, however, when the Doctor who had treated the claimant issues disability certificate. What is to be seen is whether the evidence of such Doctor is based on some material, whether he had taken X-rays, whether he had examined the injured before issuing certificate and whether there is any medical report to substantiate the view of the Doctor. If there is some record to substantiate the view of the Doctor, then the disability certificate issued by such Doctor can be accepted. In this case, PW.2 deposed that the injured was admitted in the Gandhi Hospital, on 29-07-2003 with comminuted fracture of both bones and he was treated conservatively as in-patient till 12-08-2003. On 11-01-2005, he has again examined the injured and taken X-rays and issued disability certificate. It is mentioned in Ex. A.6 that there is malunited fracture of both bones of both legs with the limitation of movements of in both knees. The claimant has also filed photo showing cross in legs. Having regard to the nature of injury sustained by the claimant, it appears that the Tribunal has rightly awarded the compensation at ` 1,70,000/-. In fact, as far as loss of earnings are concerned, the claimant may be entitled to some more amount but the claimant has not filed any cross-objections. Therefore, I do not see any reason to modify the amount awarded by the Tribunal.

4. Subject to the observations made supra with regard to the liability, the Appeal is disposed of accordingly. However, in the circumstances, no costs. As a sequel, the miscellaneous petitions, if any, pending in this appeal shall stand closed.