

Party Name : NATIONAL INS. CO. LTD Vs AJOY KR. NATH & 2 ORS

THE HONBLE THE CHIEF JUSTICE T. VAIPHEI

28.02.2017.

Heard Mr. S. Kar Bhowmik, the learned counsel for the appellant-insurer. Also heard Mr. A. Das, the learned counsel for the claimant-respondent.

The appeal is directed against the award dated 06.8.2014 passed by the learned Member, Motor Accident Claims Tribunal, Dharmanagar, North Tripura in T.S. (MAC) No.20 of 2014 awarding a compensation of `4,56,468/- for the injuries caused to him in a vehicular accident.

The learned counsel for the appellant has made three-fold contentions in attacking the impugned award:- (i) there is no proof of permanent disability or loss of earning capacity so as to warrant award of `1,00,000/- as compensation towards mental agony and pain and suffering; (ii) keeping in mind the statement of the claimant-respondent under Section 161 Cr.P.C. recorded by the police, which forms a part of the claim petition and which contradicted his statement in Court, no case of negligence is made out against driver of the offending vehicle; and (iii) the Tribunal committed grave error of law by slapping penal interest of 9% per annum if the appellant failed to make the payment within the stipulated time.

I have carefully gone through the impugned award and on giving my anxious consideration, I am of the view that the amount of `1,00,000/- awarded by the Tribunal for mental agony, pain and suffering due to 20% disability suffered by him is liable to be interfered with considering the fact that there is no shred of evidence to establish that the claimant-respondent was suffering from substantial loss of earning capacity. As for the contention of the learned counsel for the appellant that there is no negligence in the accident, the submission is noted only to be summarily rejected in view of the fact that the evidence adduced by the claimant-respondent does not suffer from any infirmity and at the same time, the purported contradictory statement recorded under Section 161 Cr.P.C. forming a part of the claim petition is not admissible in law when he was not confronted with such purported contradictory statement under Section 145 of the Evidence Act. Therefore, I am satisfied that the claimant-respondent has proved that the accident was caused by the rash and negligent driving of the offending vehicle. In so far as the penal interest is concerned, the law is now well settled without reference to cases that such award is not sustainable in law.

Resultantly, this appeal is partly allowed. The compensation awarded to the claimant-respondent stands reduced to `4,06,468/- i.e. after deducting a sum of `50,000/-. As the amount awarded by the Tribunal has already been deposited by the appellant, the Registry will release the amount awarded so modified herein to the claimant-respondent without any loss of time after satisfying the usual conditions. The resultant excess amount after satisfying the modified award shall be refunded to the appellant.

Needless to say, the interest payable shall be confined only to 6% per annum from the date of the claim petition and the appellant is not liable to pay any penal interest. The impugned award stands modified in the manner indicated above. Transmit the L.C. record forthwith.