

M.A.C.M.A.No.1068 OF 2009

JUDGMENT:

The petitioner in M.V.O.P.No. 667 of 2003, preferred this appeal impugning the award dated 24.04.2007 passed by the learned Chairman of the Motor Accidents Claims Tribunal-cum-II Addl. District Judge, Amalapuram, East Godavari district (*for short, 'Tribunal'*) with the contention that the compensation of Rs.7,55,000/- awarded out of Rs.12,00,000/- by the tribunal is utterly low treating as contributory negligence, that the tribunal ignored the evidence of P.Ws.1 and 5 to 7 which shows the accident was occurred due to rash and negligent driving of the driver of the car bearing No.AP5T 8856 and there is no evidence to show that the claimant is riding his motor cycle in rash and negligent manner, that the evidence of R.W.1 inspire no confidence, that the tribunal failed to peruse the sketch and photographs of the vehicles at the place of accident which clearly reveals that the accident was occurred due to rash and negligent driving of the driver of the car, hence to set aside the award of the tribunal and award compensation as prayed for.

2.Heard the learned counsel for the petitioner as well as the 1st respondent-driver for the 2nd respondent-owner and the 3rd respondent-Insurer remained ex parte and perused the impugned order of the trial Court and perused the material on record.

3. So far as the quantum arrived by the tribunal is concerned, there is no dispute but for the tribunal fixing 50% contributory negligence on the part of the motor cycle rider- P.W.1 vis-à-vis car driver of the Ambassador car-R.W.2(R.1). The tribunal observed that though the P.W.1 deposed regarding the accident as if he was proceeding on the left side of the road on the motor cycle and car driver R.W.2 was at negligence. In the cross-examination, he admitted about his contribution, apart from it, P.W.5 whose house is by the side of the road to the accident place, deposed though he witnessed the incident and the car driver was at fault but he further deposed as he came to the spot after half an hour of the incident but it cannot be given any credence to his evidence and there remains evidence of P.Ws.6 and 7 neighbours to P.W.5, who deposed about negligence of the car driver whereas, R.Ws. 1 and 2 deposed that the scooterist-motor cycle rider-P.W.1 alone is at fault

and by weighing the evidence contra supra when compared to the rough sketch of the scene of offence, both the vehicles are on the road and the accident shows on the middle of the road. P.W.1 in the cross-examination deposed that the road is with sufficient width even two vehicles can pass at a time and the photos clearly show contribution on both sides and thereby taken 50%each irrespective of the size of the vehicle. There is nothing to say contra to it but for to say the P.W.6 deposed of car driver R.W.2 at total fault. Once the trial Court appreciated that evidence also with reference to the evidence and the sketch and P.Ws.1 and 2 coupled with P.W.1, 6 and 7, it is the evidence overall that to be taken into consideration, part of appreciation that was done by the trial Court, arrived to the conclusion but for to say the trial Court not take care of the important fact that also regarding the size of the vehicle, it is the motor cycle of P.W.1. Having regard to the above, it requires modification of 50% contributory negligence to 40% on the part of the P.W.1.

4. Accordingly the appeal is allowed in part by modifying the contributory negligence on the part of the P.W.1 as 40% instead of 50% and the remaining 60% on the part of the driver-R.1 of R.2 insured with R.3, the respondents are directed to pay the 60% which comes to Rs.4,54,200/- by enhancing from Rs.3,80,000/- Rs.7,55,000/- with interest at 7.5%p.a. reduced from 9%p.a. as per the expression in **Rajesh v. Rajbir Singh**, from the date of claim petition (MVOP) till realization/deposit with notice within one month from today, failing which the claimant can execute and recover. On such deposit or execution and recovery, the claimant is permitted to withdraw the same. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.11.2015

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