THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1272 of 2009

JUDGMENT:

Aggrieved by the Award dated 10.11.2008 in MVOP No.1294 of 2007 passed by the Chairman, M.A.C.T-cum- IV Additional District Judge, Guntur (for short “the Tribunal”), the Claimant preferred the instant appeal.

2 a) The factual matrix of the case is thus:

On 27.09.2007 at about 6.15 pm the claimant and others were travelling in the auto bearing No. AP 7 TU 2765 from Lingayapalem to Guntur and when the auto reached near Mirchi Yard, Guntur, the auto driver drove the vehicle in a rash and negligent manner and at high speed and dashed behind a stationed lorry. Resultantly, the claimant and others sustained severe injuries all over the body. Thereafter, the claimant was shifted to GGH, Guntur and from there to Dr. Lakshmana Swamy Hospital, Lakshmipuram, Guntur, for better treatment, where he underwent surgery and steel roads were inserted to her left fore arm. It is averred that auto driver was responsible for the accident. It is further averred that because of the accident, the claimant spent huge amount towards medical expenses. On these averments, the claimant, filed MVO.P.No.1294 of 2007 under Sections 140, 163-A and 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondent Nos. 1 and 2, who are the owner and insurer of the auto and claimed Rs.1,00,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2/Insurance Company filed Counter denying all material averments and urging to put the claimant in strict proof. It contended that the accident was occurred due to the fault of other vehicle. It further contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, Pws. 1 and 2 were examined and Exs.A1 to A3 and X.1 were marked on behalf of the claimant. On behalf of respondents, Rw.1 was examined and Exs. B1. to B.4 were marked.

e) The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.50,000/- with costs and interest at 7.5% p.a under different heads as follows:

Disability Rs. 25,000-00

Pain and suffering and incidental

Expenses Rs. 25,000-00

Total Rs. 50,000-00

However, the Tribunal while granting compensation of Rs.50,000/-, exonerated the respondent No.2/Insurance Company from its liability holding that there was no valid driving license to the driver of the auto and fixed liability on respondent No.1/owner only.

Hence, the appeal by the Claimant.

3) Heard arguments of Sri Ch. Ravindra Babu, learned counsel for appellant/Claimant. Though the respondents were served, there is no representation on their behalf and hence treated as heard.

4) The parties in this appeal are referred to as they stood before the Tribunal.

5) Challenging the Award, learned counsel for appellant/claimant argued that the Tribunal ought to have fixed liability on insurance company as the policy was in force and covers the risk of passengers in the auto. Learned counsel further submitted that the compensation awarded is low and inadequate. He, thus, prayed to allow the appeal and fix joint liability on owner and insurance company and enhance the compensation.

6) In the light of the above rival arguments, the point for determination in this appeal is:

"Whether the Award passed by the Tribunal is factually and legally sustainable?"

7) **POINT:** Accident, involvement of Car bearing No. AP 7 TU 2765 and injuries to the claimant are not in dispute. The accident was occurred on 27.09.2007 at about 6.15 pm when the claimant and others were travelling in the auto bearing No. AP 7 TU 2765, the driver of the auto drove the same in a rash and negligent manner while coming from Chilakaluripet side and dashed against the stationed lorry on its back side. In the resultant accident, the claimant suffered compound fracture of both bones of left fore arm which resulted in 10% of permanent disability. For her injuries and disability, the Tribunal awarded Rs.50,000/- towards compensation.

8) So far as the liability is concerned, the Tribunal while observing that the driver had no valid and effective driving license and that the owner without taking proper precaution has entrusted the vehicle to the driver, held that the owner committed breach of the terms of the policy and thereby fixed liability on the owner/insured and exonerated the insurance company from its liability. This finding is being impugned now. On a perusal of the facts and evidence, the Tribunal rightly found that the driver had no valid and effective driving license by the date of accident and the owner knowingly entrusted the vehicle without taking proper precaution and exonerated the insurance company. This finding being impeccable as the appellant

could not prove the driving license of the driver, the same cannot be found fault.

9) So far as the quantum of compensation is concerned, having regard to the nature of the injuries and consequent disability, the Tribunal has rightly awarded Rs.50,000/- as compensation and therefore, the Tribunal is right to this extent also. In these circumstances, I find no merits in the appeal.

10) In the result, this MACMA is dismissed without costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27.10.2015

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Dt. 27.10.2015

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