

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.612 of 2005

JUDGMENT:

The instant appeal is preferred by the petitioner in M.V.O.P.No.557 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Srikakulam (for short, 'the Tribunal') not satisfied with the order dated 23.12.2004, whereby and whereunder, a sum of Rs.39,000/- was determined as compensation, but granted half of it, i.e., Rs.19,500/-, attributing negligence on the part of the petitioner himself to the extent of 50%.

2. The appellant herein is the petitioner, while the respondent Nos.1 to 3, who are the driver, owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 05.10.1998, the petitioner went to Surla junction and purchased vegetables and he claims that he engaged the lorry of the 2nd respondent bearing registration No.APS 2649 for transporting his vegetable bags to Purushottapuram and he also boarded the said lorry as the owner of the vegetable bags and when the lorry reached check-post in that village, the 1st respondent, who was the driver of the lorry, stopped the lorry at about 6-00 p.m. to enable the petitioner to get down from the lorry and unload the vegetable bags. While he was unloading the bags, the 1st respondent started the lorry without taking proper and necessary care, due to which, he fell down on the road and sustained injuries to his neck, nose, left knee, left foot and other parts of his body and he was shifted to Government Hospital, Ichapuram and from there he was referred to

M.K.C.G.Hospital, Berhampur for better treatment. He also claims that he took treatment in private nursing homes and spent Rs.15,000/- towards medical and travelling expenses, Rs.3,000/- towards extra nourishment, and, therefore, he claimed a total sum of Rs.1,50,000/- against the respondent Nos.1 to 3, who are driver, owner and insurer of the accident lorry, by laying claim under Sections 140, 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder.

5. Before the Tribunal, the 1st respondent-driver filed written statement, contending that the petitioner boarded the lorry as unauthorized passenger and the claim is excessive and arbitrary. The 2nd respondent-owner adopted the written statement filed by the 1st respondent. The 3rd respondent totally opposed the claim on the ground that the petitioner was unauthorized passenger, and, therefore, sought to exonerate it from the liability.

6. Basing on the said pleadings, the Tribunal framed five issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined himself as P.W.1 besides marking Exs.A.1 to A.3; whereas, on behalf of the 3rd respondent-Insurance Company, one of its officials was examined as R.W.1 and marked Exs.B.1 to B.4 in an attempt to show that there was violation of terms and conditions of the policy.

7. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the parties, while dealing with issue Nos.1 and 2 together, found that there was fault on the part of both the drivers of the lorry as well as the petitioner, and, thus, contributed the negligence to the extent of equal halves; and on issue No.3, touching the determination of compensation as against Rs.1,50,000/- claimed by

the petitioner, taking into consideration that there were six simple injuries and two grievous injuries, granted Rs.15,000/- each to the grievous injuries and Rs.1,500/- each to the simple injuries, and, thus, a total sum of Rs.39,000/- was arrived, but in view of finding on issue Nos.1 and 2, granted half of it, i.e., Rs.19,500/-, with interest at 9% per annum.

8. Aggrieved of the aforesaid order, the petitioner preferred the instant appeal seeking enhancement of the compensation contending in the grounds of appeal that the Tribunal was not right in dividing 50% negligence on him and the second ground is, that despite the fact that he sustained two grievous injuries, which were fractures, meager amount was granted by the Tribunal, and, therefore, sought to enhance the compensation.

9. Heard Sri Aravala Rama Rao, learned counsel for the appellant-petitioner, Sri Naresh Byrapaneni, learned counsel for the 3rd respondent-Insurance Company. None appears for the 2nd respondent. It is stated in the grounds of appeal that the 1st respondent is not a necessary party to the instant appeal.

10. Perused the order under challenge and the evidence, both, oral and documentary, let in by the parties respectively. As seen from the finding recorded on issue Nos.1 and 2 casting negligence to the extent of 50% on the part of the petitioner, certainly, appears to be not correct. It is the duty of the driver of the lorry to see that the petitioner unloads the goods completely and then move the vehicle, which care, he failed to take, though, he was obligated with such duty, and, therefore, that finding of the Tribunal is upset while holding that only due to the rash and negligent driving of the lorry by its driver the accident had occurred.

11. Turning to the ground seeking enhancement of compensation, the Tribunal granted Rs.1,500/- each to the six simple injuries, which is maintained. So far as the amount of Rs.15,000/- granted to each of the grievous injuries, shown as injuries 7 and 8 in Ex.A.2, certainly, the petitioner is entitled to Rs.20,000/- each and concerning pain and suffering, extra nourishment and transport charges, and, thus, the total compensation is enhanced to Rs.49,000/-, but however, with interest at 7.5% per annum from the date of petition till realization as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1]. Since no appeal is preferred by the Insurance Company, the contention raised before the Tribunal that, the petitioner was travelling as an unauthorized passenger, does not deserve any consideration. Therefore, the respondent Nos.1 to 3 are liable to pay the compensation jointly and severally as ordered by the Tribunal.

12. In the result, the appeal is allowed in part and the order and decree dated 23.12.2004, passed by the Tribunal in O.P.No.557 of 1999 is modified, casting the entire negligence on the lorry driver while enhancing the compensation to Rs.49,000/- (Rupees forty nine thousand) from Rs.39,000/- (Rupees thirty nine thousand), with interest at 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

26th February, 2015

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