

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.3295 of 2009

JUDGMENT:

1 Challenging the judgment and award dated 08.06.2009 passed in M.V.O.P.No.157 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District & Sessions Judge, Vizianagaram wherein and whereby an amount of Rs.2,14,000/- was awarded as compensation by fastening the liability only on the driver and owner of the crime vehicle, the claimants filed the present appeal.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts, which are relevant for disposal of the present appeal, briefly, are as follows:

4 The petitioners filed the petition seeking compensation of Rs.5.00 lakhs for the death of one Suribabu in a motor vehicle accident that occurred on 16.5.2005. The respondent Nos.1 to 3 filed counters and resisted the claim of the petitioners. During the course of trial on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the 3rd respondent R.W.1 was examined and Exs.B.1 to B.4 were marked.

5 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the Auto bearing No.AP 35 U 107 and allowed the petition in part by awarding compensation of Rs.2,14,000/- with interest at 6% p.a from the date of filing of the petition till the date of realisation by fastening the liability only on the respondent Nos.1 and 2. However, the petition against the 3rd respondent – insurance company was

dismissed. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners filed the present appeal.

6 Heard Sri Jayanthi S.C.Sekhar, the learned counsel for the petitioners and Sri Kuriti Bhaskara Rao, the learned counsel for the 2nd respondent. There is no representation for the 3rd respondent - insurance company.

7 A perusal of the record reveals that the Tribunal dismissed the petition against the 3rd respondent. At the time of arguments, the learned counsel for the petitioners as well as the 2nd respondent submitted that after completion of trial, the learned counsel for the 3rd respondent – insurance company filed a memo stating that the vehicle in question was insured with the 3rd respondent – insurance company at the relevant point of time. He further submitted that during the course of trial, the 3rd respondent has not traced out the policy of the crime vehicle and therefore the learned counsel for the 3rd respondent filed a memo stating that the crime vehicle was insured with the 3rd respondent – insurance company. The learned counsel for the petitioners, across the Bar, has produced the memo purported to have been filed by the 3rd respondent before the Tribunal. It is not fair on the part of this Court either to believe or to discard the same as none appeared for the 3rd respondent. If really the counsel for the 3rd respondent had filed such a memo before the Tribunal, certainly, the same may be helpful to the petitioners or if no such memo is filed before the Tribunal, the stand taken by the claimants and the first respondent in this appeal would fall to ground. It is the duty of the Court to render substantial justice to the parties. The Court shall not dismiss the matters on technicalities. The Motor

Vehicles Act is a beneficial of legislation.

8 In the light of the foregoing discussion, I am of the considered view that it is a fit case to remand the matter to the Tribunal to consider whether the memo purported to have been filed by the counsel for the 3rd respondent is available in the record or not and to pass appropriate orders in accordance with law.

9 In the result, the appeal is allowed, setting aside the judgment and award passed by the Tribunal and the matter is remitted to the Tribunal to consider whether the counsel for the 3rd respondent has filed a memo admitting that the auto bearing No.AP 35 U 107 was insured with the 3rd respondent as on the date of accident or not and pass appropriate orders in accordance with law. No order as to costs. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 18th March, 2015.

Kvsn