

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.872 OF 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 29.9.2008 passed in M.V.O.P. No.419 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Tanuku.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the petition, in brief, are as follows: On 08.3.2007 at about 6.45 P.M., the petitioner was proceeding to canal bund on the road leading from Peravali to Penugonda. At that time, the driver of tractor and trailer bearing Nos.AP 37 AE 5392 and AP 37W 7867 respectively, had driven the same in a rash and negligent manner and the trailer hit the petitioner. The accident was occurred due to rash and negligent driving of the driver of the tractor and trailer, against whom the Station House Officer, Peravali Police Station registered a case in Crime No.19 of 2007 under Section 338 IPC. Due to the accident, the petitioner sustained injuries on various parts of the body and took treatment for a long time. He spent huge amount towards medicines and treatment. The first respondent is the driver of the tractor and trailer, second respondent is the owner of the tractor, third respondent is the owner of the trailer and the fourth respondent is the insurer of the trailer. Therefore, the respondent Nos.1 to 4 are joint and severally liable to pay compensation of Rs.1,00,000/- to the petitioner with interest and costs.

4. The respondent Nos.1 to 3 remained *ex parte*. The fourth respondent—insurance company filed counter denying the material averments made in the petition *inter alia* contending that the tractor hit

the petitioner. The Police registered the case against the first respondent five days after the accident. The trailer was not involved in the accident. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition is liable to be dismissed so far as this respondent is concerned.

5. Basing on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident occurred due to rash and negligent driving of the first respondent / driver of Tractor bearing No.AP 37 AE 5392 belonging to the second respondent?
- 2) Whether the petitioner sustained injuries in the above accident?
- 3) Whether the petitioner is entitled to compensation, if so, to what amount and from which of the respondents?
- 4) To what relief?

6. During the course of the trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A10 were marked. On behalf of the fourth respondent, R.W.1 was examined and Ex.B1 policy was marked.

7. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the tractor, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.73,000/-, directing the respondent Nos.1 and 2 jointly and severally to pay compensation. The petition against respondent Nos.3 and 4 was dismissed. Feeling aggrieved by the judgment and award, the claimant preferred the appeal.

8. Heard Sri T.Ramakoteswara Rao, learned counsel for the appellant – claimant and Mrs.Patra Nireekshana, learned standing counsel for the fourth respondent – insurance company.

9. The contention of the learned counsel for the claimant is two fold: (1) the finding of the Tribunal that the tractor hit the claimant is not supported by oral and documentary evidence; and (2) the Tribunal committed error while dismissing the petition against the respondent Nos.3 and 4. **Per contra**, the learned counsel for the fourth respondent submitted that the finding of the Tribunal that the tractor hit the petitioner is supported by the documentary evidence. She further submitted that the Tribunal rightly arrived at a conclusion that the tractor was not insured with fourth respondent as on the date of the accident.

10. Now the point that arises for consideration in this appeal is:

Whether the Tribunal has committed any error while dismissing the petition against the respondent Nos.3 and 4?

Point:

11. As per the finding of the Tribunal, the tractor bearing No.AP 37 AE 5392 hit the petitioner. In the petition, the petitioner has specifically stated that the trailer bearing No.AP 37W 7867 hit him. As per the averments made in the petition, the tractor bearing No.AP 37 AE 5392 did not hit the petitioner. In the cross-examination, P.W.1 in unequivocal terms deposed that the tractor hit him. A perusal Ex.A1, F.I.R., reveals that the petitioner himself lodged a complaint to the Police. As per the averments in the F.I.R., the tractor alone hit the petitioner. As per the recitals of Ex.A1, the trailer did not hit the petitioner. The Police investigated into the matter and filed charge sheet (Ex.A4). As per the contents of the charge sheet, the tractor alone hit the petitioner. Ex.A1 F.I.R., was registered on 09.3.2007 basing on the complaint lodged by the petitioner, whereas the petitioner filed the present petition before the Tribunal in the month of June, 2007. The petitioner has given a go-bye to the recitals of Ex.A1 F.I.R., and Ex.A4 charge sheet and taken the new plea in the petition

that the trailer hit him. During the cross-examination, wittingly or unwittingly, the petitioner deposed that the tractor hit him. Some times, the witnesses may speak truth without knowing the legal or logical consequences. On coming to know that the tractor was not validly insured as on the date of the accident, the possibility of taking the stand that the trailer, which was validly insured with fourth respondent, hit the petitioner cannot be ruled out. The Tribunal has assigned cogent and valid reasons to its finding on this aspect. There are no grounds much less valid grounds to set aside the well-considered finding of the Tribunal on issue No.1.

12. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of tractor, which resulted in injuries to the petitioner.

13. The petitioner filed the petition claiming a compensation of Rs.1,00,000/-. The Tribunal rightly considered the oral testimony of P.Ws.1 and 2 and Ex.A2, wound certificate, and awarded an amount of Rs.30,000/- towards pain and suffering. Basing on the medical bills, the Tribunal awarded an amount of Rs.40,000/- towards medicines. The Tribunal also awarded an amount of Rs.3,000/- towards future operation. A perusal of the record reveals that the Tribunal has awarded just and reasonable compensation to the petitioner. Therefore, I am unable to accede to the contention of learned counsel for the claimant that the Tribunal has not awarded just and reasonable compensation.

14. In view of the finding on issue No.1, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Respondent Nos.3 and 4 are not liable to pay compensation to the petitioner. The Tribunal has not committed any illegality or irregularity while fastening the liability on respondent Nos.1 and 2. Accordingly, the point is answered against the claimant.

15. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 24.3.2015

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