

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1208 of 2009

JUDGMENT:

Aggrieved by the Award dt:20.02.2009 in M.V.O.P.No.1675 of 2006 passed by the Chairman, M.A.C.T-cum-XI Addl. District Judge (FTC), Guntur at Tenali (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 08.11.2005, while he was proceeding on his motor bike and when he reached Cheruvukatta, Jampani village, Vemuru Mandal, Guntur, one lorry bearing No.AEW 8969 came in opposite direction being driven by its driver at high speed and in a rash and negligent manner, hit the motorbike of the claimant. Due to which, the claimant sustained multiple injuries including head injury. It is averred that the accident was occurred due to rash and negligent driving by the driver of lorry. On these pleas, the claimant filed M.V.O.P.No.1675 of 2006 under Sec.163-A, 166 and 141 Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2, who are owner and insurer of the offending lorry.

b) Respondent No.1 remained *exparte*.

c) Respondent No.2 filed written statement denying all the material averments made in the petition and urged to put the claimant in strict proof of the same. It contended that the accident

was occurred due to the negligent driving claimant himself. Finally, it contended that the compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A10 and Ex.X.1 was marked on behalf of claimant. No oral or documentary evidence was adduced on behalf of respondents.

e) The Tribunal though assessed the compensation at Rs.84,473/- under different heads mentioned below, still dismissed the claim petition on the observation that the claimant failed to prove that the lorry bearing No.AEW 8969 was involved in the accident and the accident was occurred due to the negligence of driver of the said lorry.

Medical expenditure	
Rs.19,473-00	
Loss of past earnings	
Rs.15,000-00	
Loss of amenities due to loss of smelling sensation	Rs.30,000-00
Pain and suffering	
Rs.20,000-00	

	Total
Rs.84,473-00	

Hence, the appeal by claimant.

3) The parties in the appeal are referred as they were arrayed before the lower Tribunal.

4) Heard arguments of Sri A.Rajendra Babu, learned counsel for appellant/ claimant and Sri T.Ramulu, learned counsel for respondent No.2/ Insurance Company. Though notice to R.1 was served but there is no representation on his behalf, hence treated as heard.

5) Severely opposing the award of the Tribunal dismissing the claim on the ground that the claimant failed to establish that the crime lorry bearing No. AEW 8969 was involved in the accident and its driver was responsible for the accident, learned counsel for appellant vehemently argued that the lower Tribunal committed grave error in appreciating the facts and evidence. He would argue, it is not the case of respondents in the O.P, who are the owner and insurer that the crime lorry was not involved in the accident. The 1st respondent/ owner remained *exparte* and 2nd respondent/insurer in its counter did not make even a whisper of the contention that the crime lorry was not involved in the accident. Further, a perusal of Ex.A.1—FIR would show that the staff of the claimant reached the accident spot on cell phone intimation to rescue him and found the crime lorry at the spot and mentioned this fact in FIR. Further, the police after thorough investigation, having found that the crime lorry involved in the accident and that its driver was responsible for the accident, charge-sheeted him. Above all, during enquiry, PW.1—the claimant in his evidence clearly deposed that the lorry bearing No.AEW 8969 came in his opposite direction and hit him and the respondent in the cross examination did not challenge this part of

the evidence. In spite of the cogent evidence regarding involvement of the crime lorry in the accident, the Tribunal on assumptions and presumptions held as if the claimant failed to establish the involvement of the lorry in the accident.

a) Learned counsel would further argue that regarding the fault of the lorry driver also, there was ample evidence. PW.1 clearly stated that before accident he was proceeding on the left side of the road and that the accident was occurred due to the fault of the lorry driver. Except giving a suggestion which was denied, he argued, the respondents have not adduced any contra evidence to disprove the evidence of PW.1 on the method and manner of occurrence of the accident. He submitted that unlike in criminal cases, in motor accident claims, the fault of the concerned driver can be established by preponderance of probabilities. He thus submitted that the finding of the Tribunal on issue No.1 was quite illogical and unwarranted.

b) Nextly, he argued that the compensation awarded under different heads was also quite low and needs to be revised. He thus prayed to allow the appeal and fix liability on both the respondents and award enhanced compensation.

6) Per contra, learned counsel for 2nd respondent/Insurance Company while supporting the award, argued that the Tribunal rightly held that the claimant failed to establish that the lorry in question was involved in the accident and its driver was responsible for the accident. Commenting on the FIR

allegations, he argued that the FIR was lodged quite sometime after the accident and hence, in the meanwhile the lorry must have been implanted. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

“Whether the award passed by the Tribunal dismissing the claim is legally and factually sustainable?”

8) **POINT:** On a close scrutiny of the facts and evidence, it must be said that the approach of the Tribunal in arriving its findings in the award is quite perverse and illogical. The Tribunal framed issue No.1 as follows:

“Whether the accident was occurred due to the rash and negligent driving of the driver of Auto bearing Registration No.AP 07 TT 5812?”

The above framing of issue itself is quite erroneous since no auto bearing registration No.AP 07 TT 5812 was involved in the accident and it is nobody's case either. It appears, instead of mentioning as lorry bearing registration No.AEW 8969, it was wrongly mentioned as auto bearing registration No.AP 07 TT 5812. Be that it may, the issue No.1 for the purpose of discussion can be taken as “Whether the accident was occurred due to the rash and negligent driving of the driver of lorry bearing registration No.AEW 8969.

9) As per the claim petition, the lorry bearing No.AEW 8969 went in the opposite direction and hit the motorcycle of the

claimant near Cheruvukatta in Jampani Village of Vemuru Mandal, Guntur District. The 1st respondent who is the owner of the vehicle remained *exparte* and 2nd respondent/Insurance Company filed counter. A close scrutiny of the counter of R.2 would not show that R.2 denied the involvement of the lorry in the accident. On the other hand, in Para 16 of its counter, its plea is that there was no negligence on the part of the driver of the lorry bearing No.AEW 8969. In Para 13, it repudiated its liability on the contention that the driver of the lorry had no valid driving licence. So it is crystal clear that R.2 did not take any plea to the effect that lorry was not involved in the accident. Therefore, no issue was framed to that effect by the Tribunal either. Further, during the course of cross examination of PW.1 also no suggestion was given to him that the lorry was not involved in the accident. However, curiously at the end of Para 12 of its judgment, learned Presiding Officer made an observation that there was no evidence to show that the vehicle of the R.1 was in fact involved in the accident and that the accident was occurred on account of the negligence of the respondent. I am constrained to hold that this is a perverse observation in the light of pleadings and evidence. It must be noted that the second part of the observation that there was no evidence to show that the accident was occurred on account of the negligence of the respondent is also perverse, which is evident from the deposition of PW1. PW1 in his evidence clearly deposed that on 08.11.2015 at about 2:40pm, while he was proceeding on his motorcycle towards

Tenali and reached Cheruvukatta in Jampani village by observing the traffic to and fro, the driver of the lorry bearing No.AEW 8969 drove the same in a rash and negligent manner and at high speed and hit his motorcycle from the opposite direction. At another instance, he said in his evidence that he stated to the police that the accident was occurred only due to the rash and negligent driving of the driver of the lorry and by the time of accident he was proceeding slowly on the left side of the road. This part of his evidence could not be shattered since the respondent except giving a suggestion that the entire negligence was on the part of the claimant and driver of the lorry was not responsible, did not extract any useful material to impeach the credibility of his evidence. So the evidence of PW.1 is indicative of the fact that while he was going on the left side of the tank bund by observing ongoing traffic, the lorry came in the opposite direction on a wrong side being driven by its driver in a rash and negligent manner and hit his motorcycle. That is the only inference that can be derived from the evidence of PW.1. As rightly argued by learned counsel for appellant, no contra evidence is produced by the respondents either to prove the innocence of the lorry driver or to establish the fault of the claimant. Despite all these, unfortunately the Presiding Officer of the lower Tribunal came to conclusion that there was no evidence to show that the vehicle was involved in the accident and the accident was occurred on account of negligence of the respondent. He accordingly, answered issue No.1 against the

claimant. The observation and ultimate finding on issue No.1 being perverse, the same is set aside and it is held that the accident was occurred due to the fault of the lorry driver.

10) Coming to the quantum of compensation, the Tribunal arrived at a total compensation of Rs.84,473/- out of which, the compensation of Rs.30,000/- towards loss of amenities and Rs.20,000/- for pain and suffering, need to be revised for the reason that the claimant suffered internal injury to the head with sub-dural hemorrhage which is grievous one and ultimately led to loss of smelling sensation. Hence, compensation for pain and suffering is enhanced to **Rs.35,000/-** and similarly, compensation for loss of amenities due to loss of smelling sensation is enhanced to **Rs.40,000/-**.

Thus the total compensation payable to the claimant under different heads is detailed as below:

Medical expenditure	Rs. 19,473-00
Loss of past earnings	Rs. 15,000-00
Loss of amenities due to loss of smelling sensation	Rs. 40,000-00
Pain and suffering	Rs. 35,000-00
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Total	Rs.1,09,473-00

Thus the compensation is enhanced by Rs.25,000/-

(Rs.1,09,473/- minus Rs.84,473/-).

11) In the result, this M.A.C.M.A. is allowed and the award dt: 20.02.2009 passed by the Tribunal is set aside and ordered as follows:

- a) The claimant is awarded a sum of **Rs.1,09,473/-** with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization; and
- b) Respondents in the OP are directed to deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against them.

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

U. DURGA PRASAD RAO, J

Date: 03.11.2015

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