

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.3422 of 2005

JUDGMENT:

Aggrieved by the order dated 28.08.2004 in O.P.No.392 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Anantapur (for short, 'the Tribunal'), the instant appeal is preferred by the petitioner.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') and the insurer of the jeep respectively, were respondents in the original petition.

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

4. The facts in brief are that the petitioner is the owner of the jeep bearing registration No.AP 10T 6123 and he has given his jeep on hire for transporting a statue from Bondaladinne to Dharmavaram and when it reached Narpala crossing at about 12-15 p.m., an RTC bus owned by the 1st respondent bearing registration No.AP 10Z 2740 coming from Anantapur side driven in a rash and negligent manner dashed against the right side of the jeep's back wheel, as a consequence, it moved aside and fell down and completely damaged. The persons travelled in the jeep also sustained injuries. The Station House Officer, Narpala Police Station registered a case in Crime No.19 of 1997 against the driver of RTC bus. The petitioner, therefore, laid a claim for Rs.1,00,000/- under Sections 165 and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder, against the driver of the RTC bus, as well as the insurer of the jeep.

5. Both the respondents opposed the claim by filing separate detailed counters before the Tribunal. The specific plea taken by the Corporation was that there was rash and negligent driving on the part of the driver of the jeep for taking place the accident, whereas, the 2nd respondent-Insurance Company contended that the policy obtained by the petitioner was only an Act policy, and, therefore, it is not liable to pay compensation.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the accident occurred on 19-5-1997 due to the rash and negligent driving of the APSRTC Bus bearing No.AP-10-Z-2740 by its driver, dashed against the Jeep of the petitioner bearing No.AP-10-T-6123 and caused damages to the petitioner's Jeep?

2. Whether the petitioner is entitled to compensation? If so, to what amount and from which respondent?

3. To what relief?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining one B.Venkatasubbaiah, one of the alleged passenger in the said jeep, as P.W.2 and marked Exs.P.1 to P.55; whereas, on behalf of respondent No.2, its Assistant Administrative Officer was examined as R.W.1 and marked a copy of insurance policy as Ex.R.1.

8. The Tribunal, on appraisal of evidence of, both, oral and documentary, let in by the petitioner and the 2nd respondent, on issue No.1, held that the accident had occurred on account of the rash and negligent driving of the driver of the RTC bus as well as the driver of the jeep and both are equally responsible for the accident. On issue No.2, the Tribunal while observing that no person connected with Exs.P.3 to P.28 were examined to prove the correctness of the contents of the bills and basing on the damage to the jeep, as reflected from Exs.P.30 to P.54, which are the positive photographs, somehow, arrived at the conclusion that the owner of the jeep spent not more than Rs.40,000/-, and besides the same, towards loss of earnings on account of damage to the jeep, fixed the amount of Rs.10,000/- and determined the compensation at Rs.50,000/- and directed the 1st respondent-Corporation to pay half of it amounting to Rs.25,000/- and since it was own negligence, the other half of the amount was attributed to the driver of the jeep and thereby exonerated the 2nd respondent-Insurance Company from liability to pay the said amount. The Tribunal granted interest at 12% per annum on the amount of compensation.

9. It is the aforesaid order which is under challenge in the instant appeal besides seeking enhancement of compensation by the petitioner contending in the grounds, that the Tribunal ought to have granted the entire amount of Rs.1,00,000/- instead of

limiting it to Rs.25,000/-. The main ground taken by the petitioner is that due to rash and negligent driving of the RTC bus driver only, the accident had occurred, as reflected from the charge sheet, but somehow, the Tribunal went wrong in finding the negligence on the part of the driver of the jeep for taking place of the accident. The other ground is that the bills worth Rs.78,500/- were produced, since the Tribunal assuming that the petitioner might have spent not more than Rs.40,000/-, granted the same, which is also not correct. It is further stated that apportioning liability by the Tribunal between the Corporation and the owner of the jeep is improper since the police have conducted investigation and laid charge sheet against the driver of the RTC bus since the investigation disclosed that due to rash and negligent driving of the RTC bus driver, the accident had taken place, and, therefore, sought enhancement of compensation and also to fasten liability on the 1st respondent.

10. Heard Sri V.L.Surendra, learned counsel for the appellant-claimant, and Sri Aravala Rama Rao, learned Standing Counsel for the 1st respondent-Corporation, and Sri Nisaruddin Ahmed Jeddy, learned Standing Counsel for the 2nd respondent-Insurance Company.

11. Perused the order under challenge and the evidence on record adduced by the parties, both, oral and documentary. Concerning the finding recorded by the Tribunal on issue No.1 that due to rash and negligent driving of both the drivers, the accident had occurred, appears to be totally without any convincing evidence on record for the reason that the investigation conducted by the police revealed the rash and negligent driving of the RTC Bus driver that alone caused the accident and that has been the reason that the charge sheet was laid against the driver of the RTC bus. That apart, even the very manner in which the accident occurred as reflected from Ex.P.1 certified copy of F.I.R. and Ex.P.2 certified copy of charge sheet, would clearly indicate that since the RTC bus went and hit the right portion of the jeep, the jeep was pushed down aside the road and it fell by the side of the road resulting in damage to the vehicle, and, therefore, the finding recorded by the Tribunal is liable to be modified to the extent that only due to rash and negligent driving of the driver of RTC bus, the accident has taken place.

12. On issue No.2, the finding recorded by the Tribunal that none connected with Exs.P.3 to P.28 was examined to prove the contents of the bills, worth Rs.67,947/-, the same cannot be disturbed in view of the fact that contents of the documents were

to be proved by examining the person who said to have received the amount under the bills in case the amount did really pass from the petitioner to the party concerned and mere marking of documents would not amount to prove the contents of the documents. Therefore, the submission of the learned counsel for the petitioner that Exs.P.3 to P.28 are deemed to have been proved is without any merit. The Tribunal, somehow, arrived at Rs.40,000/- as against Rs.67,947/- towards damage, and in fact, when the contents of Exs.P.3 to P.28 are not proved, certainly, the petitioner is not entitled to any amount. However, since no appeal is preferred by the Corporation, the amount of Rs.40,000/- granted by the Tribunal towards damages to the vehicle and Rs.10,000/- towards loss of amount that would have been earned on the jeep, had it been roadworthy and plying are not disturbed, and, therefore, the same are confirmed.

13. So far as liability is concerned, since the Insurance Company cannot be fastened with any liability and in view of the modification of the finding recorded by the Tribunal on issue No.1, the Corporation is liable to pay the other 50% and thus, the 1st respondent-Corporation is directed to pay the remaining Rs.25,000/- with interest at 7.5% per annum on the entire amount from the date of petition till realisation, as against 12% granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

14. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by fastening the entire liability on the 1st respondent-Corporation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

25th March, 2015

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