

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 1343 OF 2005

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JUDGMENT:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 18-03-2005, passed by the V Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, F.T.C., Anantapur, in O.P.No.293 of 2000, awarding compensation of Rs.26,000/-.

The petitioner filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.60,000/- for the injuries caused during the motor vehicle accident.

The brief facts of the petition are that the petitioner is aged about 29 years and he was working in vehicles besides attending agricultural work and earning a sum of Rs.2,000/- per month. On 22-07-1997, the petitioner came to Anantapur in a van bearing No.ATA-8622 as a coolie and after completion of the work at about 4.30 p.m., the petitioner in the capacity of coolie loaded gas cylinders and other articles along with cleaner by name Bheemasena and left Ananthapur in order to go to Thimmapuram village. The driver of the van drove the vehicle in rash and negligent manner after crossing Papampalli village and dashed the opposite coming lorry bearing No.AAQ-2358. Due to which the petitioner received grievous injuries and he was unable to move. The petitioner travelled in the capacity of coolie at the time of

accident, during the course of his employment. Hence, both the respondents are jointly and severally liable to pay compensation to the petitioner.

The 1st respondent remained *ex parte*.

The 2nd respondent filed counter denying the allegations made in the petition. He denied the age, manner of accident, income and profession of the petitioner at the time of accident. In fact, the accident occurred due to rash and negligent driving of the lorry bearing No.AAQ-2358 but not the van bearing No.ATA-8622. Even otherwise there is contributory negligence on the part of the driver of the lorry. The owner of the lorry ought not to have been permitted to carry cylinders in the vehicle. Further it is stated that the claim of the claimant is excessive as the petitioner sustained only simple injuries. Therefore, the 2nd respondent – Insurance Company is not liable to pay any compensation and prayed the Court to dismiss the petition.

Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs.1 and 2 were examined and got marked Exs.A.1 to A.3 and Exs.X1 and X2. On behalf of the second respondent, RW1 was examined and got marked Exs.B.1 to B3.

After considering the evidence on record, the Tribunal held that due to rash and negligent driving of the driver of auto bearing No.ATA-8622 the accident was occurred and awarded compensation of Rs.26,000/- along with 9% per annum interest against the owner of the vehicle and dismissed the petition against

the Insurance Company.

Aggrieved by the judgment of the Tribunal in not awarding compensation against the Insurance Company the present appeal is filed.

The learned counsel for the appellant argued that as per Ex.B2 insurance policy it covers the risk of three persons i.e., driver, owner and coolie and the petitioner was travelling as coolie, as such, the Insurance Company is liable to pay compensation. It is also argued that the Tribunal has not granted any compensation towards transportation charges and towards loss of earnings, therefore, prayed the Court to enhance the compensation.

On the other hand, learned counsel for the Insurance Company argued that by considering the evidence of PW1 the Tribunal rightly dismissed the petition against the Insurance Company, as the petitioner was not a coolie travelled on that day. In fact, in the cross-examination PW1 admitted that he came to Ananthapur on 22-07-1997 on his personal work and met an Advocate and after finishing the work at about 4.30 p.m. he boarded Allwyn Nissan van bearing No.ATA-8622, which has diesel drums and gas cylinders. This admission of PW1 in the cross-examination has clearly established that PW1 was not a coolie on that day. Therefore, the Tribunal rightly exonerated the Insurance Company in its liability and finally prayed the Court to dismiss the appeal.

Having regard to the submissions made by the learned counsel for the appellant, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellants are entitled for enhancement of compensation?

Points:

A perusal of the record clearly shows that the petitioner was examined as PW1 and filed Ex.A1 certified copy of FIR, Ex.A2 wound certificate and Ex.A3 certified copy of charge sheet. A perusal of the evidence of PW1 along with Exs.A1 to A3 it is held that due to rash and negligent driving of the driver of the van the accident was occurred in which the petitioner sustained injuries. In so far as the quantum of compensation is concerned, the Tribunal after considering the evidence of the petitioner granted Rs.26,000/- under the heads of grievous injury, simple injury, pain and suffering and medical expenses.

Learned counsel for the appellant argued that the Tribunal has not granted any compensation towards transportation charges and loss of earnings. Therefore, prayed the court to enhance the compensation.

A perusal of the evidence shows that PW1 received one grievous injury and one simple injury and he was treated in the Government hospital. It is no doubt that the petitioner sustained one grievous injury. Therefore, due to that injury the petitioner must have suffered pain and suffering and also ought not to have

worked for some time. Therefore, considering all these aspects an amount of Rs.2,000/- is awarded towards transportation charges and Rs.3,000/- is awarded towards loss of earnings. Thus, compensation granted by the Tribunal is enhanced from Rs.26,000/- to Rs.31,000/- (26,000 + 2,000 + 3,000).

Coming to the claim of the appellant that the Tribunal has not fixed the liability against the Insurance Company is concerned, the evidence of PW1 is sufficient to show that on the date of the incident he has not travelled in the vehicle as a coolie but he came to Ananthapur on her personal work and met an Advocate and while going to Thimmapuram village he boarded van bearing No.ATA-8622, which was met with an accident and in that accident the petitioner sustained injuries. The petitioner is neither the driver, owner or coolie of the van. The Tribunal also found that when the policy that is issued in favour of R1 does not cover the risk of person who is travelling in the said vehicle other than the driver and cleaner, the liability of the Insurance Company to pay compensation does not arise. Therefore, the said findings of the Tribunal need no interference.

In the result, the appeal is partly allowed enhancing the compensation amount from Rs.26,000/- to Rs.31,000/- against the owner of the vehicle – respondent No.1. The appeal as against R2 is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

July 15, 2015

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