

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.372 of 2013

JUDGMENT:

-

This appeal is filed by the Insurance Company against the order and decree dated 06-10-2004, in OP.NO.693 of 2001, wherein the Motor Accidents Claims Tribunal-cum-Additional District Court, Vizianagaram granted Rs.68,000/- towards the compensation in respect of injury suffered by the 1st respondent in a road accident.

The case of the appellant is that the 1st respondent filed the above OP against the appellant and other respondents 2 to 6 alleging that the 1st respondent boarded the lorry bearing No.AP 16 T 6641 being driven by its driver. When the lorry reached near Kopperla, another lorry bearing No.ATK 8969 came in opposite direction and dashed against the lorry in which the 1st respondent was traveling. As a result, the 1st respondent sustained injuries and he has taken to Government hospital, Vizianagaram and later shifted to K.G.H., Visakhapatnam for treatment. Hence, the respondent No.1 filed OP for grant of compensation for the injuries suffered by him for Rs.3.00 lakhs.

The driver and owner of lorry bearing No.8969 remained exparte and driver of lorry AP 16 T 6641 died and owner of the lorry bearing No.AP 16 T 6641 remained exparte.

The appellant who is the 6th respondent-National Insurance Company is the insurer of both the vehicles and adopted the counter of 3rd respondent- National Insurance Company and denied the contents of claim petition. Though the 3rd respondent filed counter affidavit contending that the appellant is not liable to pay compensation, since the 1st respondent herein was traveling in a goods vehicle and also they opposed the claim being excessive. The Tribunal basing on the evidence of PWs1 to 3 and Exs.A-1 to A-6 and Exs.X-1 and X-3 awarded an amount of Rs.68,000/- along with proportionate costs and interest @ 9% per annum from the date of petition till the date of realization against the appellant and respondents 2 and 3, who are the driver and owner of the vehicle bearing No.ATK 8969 respectively. Against the same, the present appeal is filed.

Learned counsel for the appellant submits that the compensation granted is excessive and at any rate, the appellant is not liable to pay the compensation because the injured-1st respondent was traveling in a goods vehicle and that is not permitted and the same is in violation of conditions of Insurance policy. But the trial Court without considering the said aspects, though raised made liable the appellant to pay the compensation.

In this case, the plea of the appellant is that the injured was travelling in the goods vehicle was not accepted by the Tribunal stating that in the counter affidavit filed by the appellant, it was fairly admitted that the 1st respondent herein is a third party and it was clearly held that

the 1st respondent herein was traveling in the lorry bearing No. AP 16 T 6641 and is a third party and as such, the appellant cannot contend that it is not liable to pay compensation to the 1st respondent. It is also to be seen that the National Insurance Company, which is the appellant is the insurer of both the vehicles i.e. the offending lorry and the vehicle in which the 1st respondent was traveling are insured by Insurance Company. The trial Court after considering the same held that the 1st respondent is a third party and held that the lorry bearing No. ATK 8969 was driven by

driver in a rash and negligent manner. In this case the appeal against the respondents 2 and 3 who are the driver and owner of lorry bearing No. ATK 8969 is dismissed

on 22-01-2010. The trial Court considered the plea raised by the appellant and gave clear and categorical finding that the 1st respondent is a third party traveling in a lorry bearing No. AP 16 T 6641 and the insurer of vehicle bearing No. 8969 was held liable on the ground that the 1st respondent is a third party.

As far as the quantum of compensation is concerned, the Tribunal basing on the evidence of PWs 2 and 3, who are the Doctors who examined the injured and basing on the evidence of the 1st respondent-injured as PW.1 granted compensation of Rs.68,000/- and the Tribunal has also held that the 1st respondent suffered 70% partial disability. Basing on the disability certificate Ex.A-6 granted the compensation of Rs.52,500/- and an amount of Rs.20,000/- towards pain and suffering and also Rs.4,455/- towards medical expenses by placing reliance on Ex.A-5 medical bills. The Tribunal also held that the 1st respondent herein sustained fractures and he took treatment at KGH, Visakhapatnam and at Government Hospital, Vizianagaram

as per Exs.X-1 to X-3 and an amount of Rs.5500/- was granted towards transportation. The Tribunal has rightly granted compensation basing on the documentary evidence and also oral evidence adduced by the 1st respondent herein. In view of the same, I do not see any reason to interfere with the quantum of compensation also.

In view of above facts and circumstances, I do not see merit in the appeal and the same is liable to be dismissed.

Accordingly, the Appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions pending, if any, in the appeal shall stand closed.

30-12-2015
Nvl

A.RAJASHEKER REDDY,J