

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.238 OF 2013

JUDGMENT:

This appeal is filed against the order and decree dated 21.09.2011, passed in OP.No.386 of 2009 on the file of the Motor Accidents Claims Tribunal, Anantapur-cum-Judge, Family Court (FAC) Special Judge for trial of SCs & STs cases, Anantapur, wherein the Tribunal awarded an amount of Rs.1,50,000/- towards injuries sustained by the 1st respondent in the motor accident with interest @ 7.5% p.a. from the date of petition till the date of deposit.

The appellant herein is the 2nd respondent, while respondent No.1 is the petitioner and respondent No.2 is owner of the offending auto bearing No.AP 02 V 5943 that involved in the accident, in the O.P. before the Tribunal.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

The facts, in brief, are that on 28.02.2009, at about 1.00 p.m., while the petitioner was on his motor cycle No.AP 02 G 5453, one auto bearing registration No.AP 02 V 5943 driven in a rash and negligent manner and at high speed, dashed the motor cycle, due to which the petitioner fell down from the motor cycle and sustained injuries and he was, immediately, shifted to Government Area Hospital, Kadiri and from there he was shifted to a private nursing home at Kadiri for better treatment. Thereafter, the petitioner claimed an amount of Rs.1,50,000/- by filing MVOP.No.386 of 2009.

The 1st respondent, owner of the auto rikshaw, remained ex

parte before the Tribunal.

The 2nd respondent, insurer of the auto rikshaw filed counter, denying the case of the petitioner and pleaded that the accident occurred due to the rash and negligent driving of the petitioner himself; that the offending vehicle-auto was not insured as on the date of accident and that the driver of the offending had no driving licence at the time of accident, as such it is not liable to pay compensation.

The Tribunal basing on the evidence of PWs.1 to 4, RWs.1 and 2 and Exs.A1 to A9, B1 to B4 and X1 to X3 awarded compensation of Rs.1,50,000/- along with costs and interest @ 7.5% p.a. making responsible the respondents 1 and 2, jointly and severally, to pay the compensation.

Aggrieved by the aforementioned order, the 2nd respondent-The ICICI Lombard General insurance Company, preferred the instant appeal contending that the Offending vehicle is not insured as on the date of accident and the driver of the offending vehicle is not having valid driving licence to drive the transport vehicle and therefore, sought to set aside the award.

The Tribunal after considering the evidence of RWs.1 and 2 and Exs.B1 to B4 and X1 to X3 came to a conclusion that the offending vehicle was insured under cover note No.527864557 from 22.03.2008 to 21.03.2009 and again under cover note No.52787444 from 21.03.2009 to 20.03.2010. Even in respect of driving licence also the Tribunal at para 9.14 rightly held which reads as follows;

“RWs.1 and 2 stated that the auto driver had no valid driving licence. Through RW.2, driving licence of the

driver was marked as Ex.X2. As per Ex.X2, the auto driver was having licence for driving the LMV non transport. RW.2 stated that the driver with Ex.X2 licence cannot driver the auto. For driving the auto the person should possess auto rickshaw transport licence. In the cross-examination, RW.2 admitted that the auto is LMV. After one year of the issue of non-transport licence, transport licence can be obtained. There is no evidence that the driver possessing LMV cannot drive the auto. As breach of condition as regards the driver's clause is not proved, the 2nd respondent cannot avoid its liability on the ground that the auto driver possessed inadequate licence."

The Tribunal after considering the evidence of both the parties and also considering the objections raised by the appellant herein, gave a categorical finding that the offending vehicle was insured as on the date of accident and the driver of the offending vehicle is also entitled to drive the vehicle. The enquiry to be conducted by the Tribunal is a summary enquiry and the Tribunal after considering the same, rightly held that there is no basis in the contentions raised by the appellant.

In view of the same, I do not see any error in the order and decree passed by the Tribunal awarding compensation of Rs.1,50,000/- along with costs and interest @ 7.5% p.a. making responsible the respondents 1 and 2, jointly and severally, to pay the compensation. Therefore, the appeal is devoid of merits.

Accordingly, the appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the appeal, shall stand closed.

A.RAJASHEKER REDDY, J

16.11.2015

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