

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.4017 of 2010

IN/AND

MACMA No.115 of 2016

ORDER:

The injured claimant of O.P.No.535 of 2006 filed against driver, owner and insurer of Tata Sumo bearing No.AP 5Y 9621, impugning dismissal of the award of the tribunal dated 05.03.2010 in the claim filed under Section 166 of the Motor Vehicles Act (for short 'the Act') for Rs.1,00,000/-, preferred the appeal with the contentions that the tribunal gravely erred in dismissing the claim, holding as if there is a negligence on the part of the bike rider with three pillion riders as per Ex.A1-F.I.R. though it is the negligence of the 1st respondent driver of the Tata Sumo of the 2nd respondent insured with the 3rd respondent under Ex.B1-policy that dashed the bike and thereby the tribunal ought to have been allowed the claim as prayed for, hence to allow the appeal, which is filed with a delay of 46 days.

2. Whereas, it is the contention of the learned counsel for the 3rd respondent-insurer vis-à-vis learned counsel for the owner of the Tata Sumo that the tribunal is right in its award in dismissal of claim for negligence of rider of the bike with more than triple riding by violation of the policy rules and for no fault of the Tata Sumo, while crossing the road and for this Court while sitting in appeal, there is nothing to interfere, hence to dismiss the appeal.

3. Heard and perused the material on record.

4. For the reasons stated in the affidavit filed in support of the petition, the delay of 46 days in filing the appeal is condoned. The appeal is taken up for hearing.

5. Undisputedly, the crime registered and charge sheet filed against driver/1st respondent of Tata Sumo, for the offence punishable under Section 337 I.P.C., to say three simple injuries sustained by the injured claimant is on left foot and right foot etc., with bleeding present. No doubt, as per Ex.A1-F.I.R also, there are four persons proceeding on the bike with three pillion riders and there is possibility of losing the control. However, the evidence on record, when clearly speaks Tata Sumo dashed the bike that is the contribution to the accident triple pillion riding perse cannot be attributed as self-negligence of bike rider when the factual matrix show including from the evidence of the injured claimant of Tata Sumo dashed the bike, R.W.1, employee of the 3rd respondent is not an eye witness, there is no any supporting evidence even filed by him for the tribunal to give credence to his version and to bely the evidence of the injured claimant PW.1. PW.2 is the doctor who treated the injured.

6. Having regard to the above, the respondents are liable to pay compensation for the injuries sustained by the claimants in the motor accident for the rider with three persons proceeding on the bike not contributed to the accident but for Tata Sumo that dashed the bike while crossing the road. As the injuries sustained are simple in nature, for the medical expenses treatment Rs,10,000/- is the just compensation to award.

7. Accordingly and in the result, the appeal is allowed by granting compensation of Rs.10,000/- (Rupees Ten thousand only) with interest at 7.5% p.a. against the respondents jointly and severally from the date of claim petition till the date of realization. The respondents shall deposit the said amount within one month from the date of receipt of a copy of this order, failing which the claimant can execute and recover. On such deposit, the claimant is permitted to withdraw the entire amount. There is no order as to costs.

8. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:19-01-2016

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