

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3758 of 2011

JUDGMENT:

Aggrieved by the Award dt:16.12.2005 in M.V.O.P.No.648 of 2004 passed by the Chairman, M.A.C.T-cum-V Additional District Judge, Warangal (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 21.05.2004, she along with some others was traveling in an auto bearing No.AP 36V 6750 from Bhupalpally to Chelpur and when it reached near outskirts of Bhupalpally village, one lorry bearing No.AP 37 T 5359 being driven by its driver at high speed and in a rash and negligent manner and dashed the auto from behind. Thereby, the claimant and other passengers sustained injuries. Immediately she was admitted in Thirumala Hospital, Bhupalpally and thereafter shifted to Lalitha Orthopedic Hospital, Mandibazar, Warangal for better treatment. On these pleas, the claimant filed M.V.O.P.No.648 of 2004 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent Nos.1 and 2, who are the owner and insurer of the offending lorry and claimed Rs.1,00,000/- as compensation.

b) R1/owner remained *ex parte*.

c) R2/Insurance Company filed counter denying petition

mentioned material allegations and urged to put the claimant in strict proof of the same. R2 contended that the compensation claimed is excessive and thus prayed for dismissal of OP.

d) During trial, PW1 was examined and Exs.A1 to 12 were marked on behalf of claimant. No oral or documentary evidence was marked on behalf of respondents.

e) The Tribunal on appreciation of both oral and documentary evidence, had awarded Rs.18,000/- as compensation against respondents with proportionate costs and interest @ 7.5% p.a.

Hence, the appeal by claimant.

3) The parties in the appeal are referred as they are arrayed before the lower Tribunal.

4) Heard arguments of Sri Ch.Sashi Bhushan, learned counsel for appellant/claimant and Sri Bathula Raj Kiran, learned counsel for respondent No.2/Insurance Company. Though notice sent to R1/owner was served but there is no representation on his behalf, hence treated as heard.

5) When the matter came up for hearing, learned counsel for appellant/ claimant submitted that the Tribunal awarded meager compensation mainly on the observation that though the claimant produced exhibits relating to her injuries and medical expenditure, she has not examined the Doctor who

treated her or other connected person in proof of those documents. He submitted that due to illiteracy and ignorance, she could not examine the Doctor who treated her and hence an opportunity may be given to the claimant to examine the Doctor who treated her and also the persons connected to the medical bills by setting aside the award and remitting the matter to the lower Tribunal.

6) Learned counsel for respondent/Insurance Company did not object the request of the appellant but insisted that in case the matter is remitted back to the lower Tribunal and the appellant/claimant is given an opportunity to adduce additional evidence, an equal opportunity may also be given to the Insurance Company to cross-examine the witnesses to be examined by the claimant.

7) Having regard to the above submissions, this appeal is allowed and the Award passed by the lower Tribunal in M.V.O.P.No.648 of 2004 is set aside and the matter is remanded back to the Tribunal with a direction to permit the appellant/claimant to adduce additional evidence and also permit the respondent/Insurance Company to cross-examine the same and pass an Award on merits expeditiously. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 16.03.2016
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