

THE HON'BLE SMT. JUSTICE ANIS

MACMA NO.139 OF 2008

JUDGMENT:

This appeal is filed by the appellant/second respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 28.02.2007 passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Vijayawada, in M.V.O.P.No.52 of 2005.

2. The injured claimant filed the above M.V.O.P under Section 166 of the Act, claiming compensation of Rs.1,00,000/- on account of the injuries sustained by him in a motor vehicle accident occurred on 23.09.2004.

3. The appellant/insurance company was arrayed as the second respondent, while respondent No. 1/claimant as the petitioner and the 2nd respondent/owner of the tractor as the first respondent in the M.V.O.P. before the Tribunal.

4. For the sake of convenience, the parties are referred to as arrayed in the M.V.O.P. before the Tribunal.

5. The brief averments made in the petition are as follows:

On 23.09.2004 the petitioner along with others were travelling in an auto bearing No.AP16 TU 2194 to go to Makkapet from Jaggaiahpet and when the auto reached near

shop of one Bubamma in the outskirts of Makkapet village the driver of the tractor with trailer bearing Nos.AP 5 X 682 and AP 24 B 446K9 suddenly applied brakes without taking precaution and without giving signals to the back coming vehicles due to which the auto dashed against the trailer on its right rear portion resulting petitioner sustained fracture of both bones of left fore arm and other injuries on various parts of his body. Immediately, the petitioner was shifted to Government Hospital, Jaggaiahpet and later shifted to Government General Hospital, Vijayawada for better treatment. Basing on the report given by K.Venkateswara Rao, Vatsavai Police registered a case in Crime No.113 of 2004 against the driver of the auto under Section 304-A IPC. During the course of investigation, the police filed charge sheet stating that the driver of the tractor was responsible for the accident.

6. The petitioner stated that he was in hospital for a period of 15 days as inpatient and spent Rs.10,000/- towards medical expenses. According to the petitioner, he was earning Rs.3,000/- per month and due to which, he was unable to do any work. Therefore, prayed for compensation.

7. It is further stated that the first respondent being the owner and the second respondent being the insurer of the crime vehicle, are jointly and severally liable to pay compensation to the petitioner.

8. The first respondent remained *ex parte* before the Tribunal.

9. The brief averments made in the counter filed by the second respondent before the Tribunal are as follows:

10. The respondent put the petitioner to prove the manner of accident, age and income of the deceased. The respondent stated that the driver of the offending vehicle was not having a valid driving licence at the time of accident and that the petitioner has to prove that he spent Rs.10,000/- towards medical expenses and prayed the Court to dismiss the petition.

11. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner himself examined as PW 1 and got marked Exs.A.1 to A.4. On behalf of the second respondent, RW.1 was examined and got marked Ex.B.1-policy.

12. The Tribunal, after considering the oral and documentary evidence, held that the accident was occurred due to rash and negligent driving of the driver of the tractor and awarded compensation of Rs.39,000/- along with interest at 7.5% per annum.

13. Aggrieved by the award passed by the Tribunal, the second respondent-insurance company preferred the present appeal.

14. Learned counsel for the appellant/insurance company argued that the Tribunal has not considered the evidence properly and erred that the driver of the tractor was responsible for the accident and further stated that the 2nd respondent is not liable to pay any compensation and that the petitioner failed to implead the owner of the auto and prayed the Court to allow the appeal by setting aside the award passed by the Tribunal.

15. On the other hand, learned counsel for the 2nd respondent/claimant argued that the Tribunal, after considering the oral and documentary evidence on record granted compensation which is just and reasonable and the said finding of the Tribunal needs no interference, and prayed the Court to dismiss the appeal.

16. Having regard to the submissions made by both the learned counsel, the point that arises for consideration is:

Whether the appellant/insurance company has made out any case to set aside the award dated 28.02.2005 passed by the Tribunal in M.V.O.P.No.52 of 2005?

17. **Point:**

On perusal of the oral and documentary evidence, there is no dispute that the Tribunal rightly held that the police after investigation filed charge sheet against the driver of the tractor, who applied sudden breaks without observing the

traffic and that there is no contra evidence to dispute the same. Therefore, the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the tractor and trailer.

18. Now coming to the quantum of compensation is concerned, in the accident the petitioner sustained fracture of both bones of left fore arm and also received simple injury on his left parietal region and swelling on the left ankle. The Tribunal, after considering the evidence on record, rightly awarded reasonable compensation of Rs.39,000/- along with interest at 7.5% per annum. Therefore, the finding of the Tribunal in passing the award needs no interference.

19. Accordingly, the appeal is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

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