HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 343 OF 2006

JUDGMENT:

1. This Appeal is arising out of the award, dated 10.11.2005, in O.P. No.2625 of 2001, on the file the Chairman, Motor Accident Claims Tribunal-cum-IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad (for short, 'the Tribunal').

2. Appellant herein is the 2nd respondent-insurance company, 1st respondent herein is the petitioner-injured, and the 2nd respondent herein is the owner of the Car bearing No.AP 28Q 8442.

3. For convenience of reference, the ranks given to the parties before the Tribunal will be adopted throughout this judgment.

4. The brief facts of the case are that, on 08.01.2001 at about 12:30 noon, while the petitioner-injured along with his friend, were proceeding on Hero Honda motorcycle from Zaheerabad towards Hyderabad and when they reached near Sony Dhaba, the car coming in its opposite direction from Hyderabad, being driven by its driver in a rash and negligent manner, dashed against the scooter of the petitioner. As a result of which, the petitioner, who was a pillion rider, fell down and sustained head injury including other injuries over his body. Immediately, he was shifted to Government Hospital, Zaheerabad, from there to Gandhi Hospital, Secunderabad and finally to C.D.R Hospital, Hyderabad where he had undergone treatment as inpatient under Jeevan Data

Scheme. A case in Crime No.5 of 2001 was registered by the Kohir P.S., against the driver of the crime vehicle. Hence, the petitioner filed the Petition before the Tribunal, under Sections 140, 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 455 (1)(b) of Andhra Pradesh Motor Vehicle Rules 1989, claiming initial compensation of Rs.6,00,000/- and later enhanced it to Rs.10,00,000/- for the Injuries sustained by him in the motor vehicle accident.

5. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the crime vehicle, filed counter denying the material allegations of the petition *inter-alia* contending that the accident occurred only due to rash and negligence of the petitioner and as such the driver of the crime vehicle had no valid driving license to drive the vehicle and as such the crime vehicle was not roadworthy and further contended that the compensation claimed by the petitioner is highly excessive and exorbitant and, finally, sought for dismissal of the petition.

7. The Tribunal, on consideration of the pleadings and evidence of the witnesses PWs.1 to 4, and the documents Exs.A-1 to A-16 and Ex.B-1, on behalf of the 2nd respondent, passed the Award granting compensation of Rs.2,36,000/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making both the respondents jointly and severally liable to pay the same.

8. Being aggrieved, 3rd respondent-appellant preferred the instant Appeal seeking to set-aside the award as the compensation awarded by the Tribunal is highly excessive and exorbitant.

9. Heard Mr. Ravi Shankar Jandhyala, learned standing counsel for the appellant-insurance company, Mr. J. Sreenivasa Rao, learned counsel for the petitioner-1st respondent, and Mr. C. Vikram Chandra, learned counsel for the 2nd respondent-owner of the crime vehicle.

10. The points for consideration in this matter are:

1) Whether there is contributory negligence on the part of drivers of both the vehicles?

2) Whether the award passed by the Tribunal is illegal and perverse? If so, is it liable to be set-aside?

11. POINT Nos.1 and 2: Both the points go together. Mr. Ravi Shankar Jandhyala, learned standing counsel appearing for the appellant, mainly submitted that the 1st respondent herein has suffered only two grievous injuries and one simple injury but the Tribunal has awarded exorbitant compensation of Rs.2,36,000/-, as against his claim of Rs.10,00,000/-. It is further submitted that there is impersonation of injured in this case and he had taken me to Para 6 of the impugned order to submit that on the request of learned counsel for the appellant before the Tribunal, the petitioner was called to the Court on 07.11.2005 and when he was questioned, he stated his name as Raghavender and stated that he had four children and his wife is Sumangali. It is submitted that the Tribunal

has observed that the petitioner is from Karnataka and due to the accident his name was misheard as Raghavender instead of Rajender. It was held as follows in Para 6 of the order of the Tribunal:

> "6. ISSUES 1 TO 3: The petitioner did not choose to examine himself as a witness. On the request of the counsel for respondent No.2, the petitioner was called to the court on 07.11.2005 and when he questioned he gave his name as Raghavender and stated that he had four children and his wife is one sumangali. His name is Rajender, may be there is a mistake in hearing the name as stated by the petitioner as he is from Karnataka. He did not choose to name his wife but cleverly stated that she is Sumgangali. He gave his address correctly. He has been responding to the questions all through quite well, pretending to be not knowing Telugu. It is not known why he intended to keep himself away from the court and the witness box. However, since a petition has been filed and was allowed to represent him for some reason mentioned therein and second respondent did not question the validity of the said order, I feel that it is not fair on my part at this stage to make any remarks on this aspect. The second respondent has kept silent all these months, since amendment was made some time in the latter part of 2004 and having not questioned it within the period available."

12. In the light of the observations of the Tribunal with regard to the name of the petitioner, I do not see any force in the first contention raised by the learned counsel for the appellant regarding impersonation of the petitioner and discrepancy in his name.

13. The Tribunal in Para 9 of its order clearly held that the accident had occurred due to the rash and negligent driving of the

driver of the crime vehicle. The tribunal based its findings on the admissions of the driver of the crime vehicle, about his negligence before the Tribunal. Therefore, the finding of negligence on the part of the driver of the crime vehicle recorded by the Tribunal does not require any interference by this Court. The observations of the Tribunal in Para 19 of the order that as per the evidence PW.2, there has been contributory negligence in the accident but the Tribunal has clearly observed that there has been negligence on the part of the driver of the crime vehicle alone. The submission of learned counsel for the appellant-insurance company that the observation of the contributory negligence by the Tribunal in Para 19 of its Award is only in the light of the evidence of PW.2 and not on consideration of the entire evidence on record. Thus, the Tribunal had given a clear finding that in view of the admission made by the driver of the crime vehicle, negligence is only on the part of the driver of crime vehicle. Therefore, there is no question of contributory negligence in this case.

14. Having regard to the facts and circumstances of the case, I do not see any illegality or perversity in the Award passed by the Tribunal. Hence, the Appeal fails and is, accordingly, dismissed.

15. As a sequel, miscellaneous petitions, if any, pending in this Appeal shall stand dismissed as infructuous. No order as to costs.

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G. SHYAM PRASAD, J

Date: 20.12.2016.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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