

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.952 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the appellant-petitioner aggrieved by the order and decree dated 10.02.2005 in O.P.No.698 of 2001 passed by the VI Additional District Judge (Fast Track Court), Rajahmundry, East Godavari District (for brevity "the Tribunal"), whereby and whereunder the claim made by the appellant/petitioner under Rule 455 of the A.P. Motor Vehicle Rules, 1989, r/w. Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,00,000/- with interest at 12% per annum from the date of petition till realization for the injuries sustained by him in a motor accident occurred on 21.05.2001 was dismissed.

2. The appellant herein is petitioner, respondent Nos.1 to 3 are the driver, owner and insurer, respectively, of the offending Lorry bearing No.AP 37U 1645 in O.P.No.698 of 2001.

3. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.698 of 2001 before the Tribunal.

4. The facts would show that on 21.05.2001 at about 11.00 a.m., the petitioner along with his father was proceeding on the Scooter bearing No.AP 5H 8078 from Inavilli Village to Ryali Village and when they reached near Bhaskara Reddy Rice Mill, on the main road of Ravulapalem, the 1st respondent – driver, who was proceeding ahead of the scooterist, drove the lorry bearing No.AP 37U 1645 in a rash and negligent manner, suddenly applied brakes and stopped the lorry without indicating any signal, due to

which the back left portion of the lorry came into contact with the scooterist, as a result of which the petitioner and his father fell down on the road and the petitioner sustained grievous injuries. Immediately after the accident, the petitioner was shifted to Government Hospital, Kothapeta, for treatment by the 1st respondent – driver, where he was given first aid and thereafter, he was shifted to Janaki Nursing Home, Kakinada for expert treatment. Stating that he sustained severe head injury and due to fracture to his right hand and injury to his left eye, he became permanently disabled and the same affected in his performance of duties as Mechanical Supervisor in EMPEE Sugar and Chemical Limited, Naidupeta, Nellore District and, therefore, filed the aforesaid O.P. seeking a sum of Rs.1,00,000/- towards compensation for the injuries sustained by him in the accident.

5. Before the Tribunal, respondent Nos.1 and 2, who are driver and owner, respectively, of the offending lorry remained exparte, and respondent No.3 – Insurer alone opposed the claim attributing reckless driving on the part of the petitioner and sought to dismiss the claim petition.

6. Basing on the pleadings, the Tribunal framed the following issues for fixing liability and determining the amount of compensation:-

“(1) Whether the petitioner sustained injuries in the motor accident that took place on 21.05.2001 due to rash and negligent driving of the lorry AP 37U 1645 by its driver – 1st respondent?

(2) Whether the petitioner is entitled for compensation and if so, to what amount and from whom?

(3) To what relief?”

7. During enquiry, the petitioner examined himself as P.W.1 and got marked Exs.A-1 to A-7. On behalf of respondent No.3 - insurer, one Sri M. Sree Ramulu, Assistant Administrative Officer and Legal Officer of the company, was examined as R.W.1 and Exs.B.1 and B.2, which are insurance policy of the offending lorry and attested copy of final report dated 19.06.2001 filed by the police concerned treating the case as mistake of fact, were marked.

8. The Tribunal dismissed the claim of the petitioner observing that except the self-serving statement of P.W.1, no other witnesses were examined to prove that the 1st respondent – driver drove the offending vehicle in a rash and negligent manner and that the FIR cannot be construed as a substantive piece of evidence and except ipsi-dixit statement of P.W.1, there is no other cogent evidence to substantiate the allegation that the 1st respondent – driver is solely responsible for the accident and hence no liability can be fastened on respondent Nos.1 to 3, though computed the amount of compensation at Rs.30,000/-, both towards general and special damages. It is the aforesaid order, which is under challenge in this Civil Miscellaneous Appeal.

9. Heard Sri N. Siva Reddy, learned counsel for the appellant/petitioner as well as Sri G. Purushotham Rao, learned Standing Counsel for respondent No.3 – insurer, and perused the impugned order and evidence on record, both, oral and documentary.

10. The manner in which the accident had occurred, as projected by the petitioner, is not in dispute. It is no doubt true that initially

the crime was registered against the 1st respondent - driver of the offending lorry. The evidence of R.W.1, who was examined on behalf of respondent No.3 – insurer, and Ex.B.2 – attested copy of final report dated 19.06.2001, treating the case as mistake of fact, is sufficient to hold that the investigation revealed that no rash and negligent driving can be attributed to the driver. There is no other escape except inferring the same from the final report dated 19.06.2001 filed by the investigating officer, which is marked as Ex.B.2.

11. This apart, the manner in which the accident had occurred would ex facie prove that the petitioner was not maintaining the required distance while he was proceeding behind a running lorry so as to take precautions in averting contact with a lorry going ahead and invariably there would not have been any occasion for the driver of the lorry to see the petitioner's scooter and keeping in view these aspects, certainly, the finding tendered by the Tribunal that rash and negligent driving cannot be attributed to the 1st respondent – driver cannot be faulted. Consequently, the dismissal of the claim petition cannot be withheld, though the Tribunal arrived at a sum of Rs.30,000/- towards compensation.

12. For the aforesaid reasons, there are no merits in this Civil Miscellaneous Appeal and the same is accordingly dismissed. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

29.03.2016.

Msr

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