

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.3137 OF 2005

JUDGMENT:

The injured-claimant in M.V.O.P.No.179 of 2000 (common award passed in M.V.O.P.Nos.179 and 180 of 2000) on the file of the Chairman, Motor Accidents Claims Tribunal–cum- II Addl. District Judge, Fast Track Court (for short, 'the Tribunal'), Srikakulam, maintained under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), against owner and Insurer of the crime vehicle (Tractor and Trailer) bearing Nos.AP 30/T 1685 and 1687 respectively, for the claim of Rs.1,00,000/- for the injuries sustained by him in the accident dated 23.02.1999 claiming that while he was traveling on the tractor as a cooli under the 1st respondent-owner with sand load after loading for unloading due to the rash and negligent driving of the driver of the tractor, the tractor turned turtle and he sustained injuries, aggrieved by the award dated 05.07.2005 passed by the tribunal granting Rs.25,000/-, preferred this appeal with the contentions in the grounds of appeal that the tribunal failed to see that there is negligence on the part of the driver of the crime vehicle and due to the rash and negligent driving of the driver only the accident took place and the respondents did not discharge their burden to prove that there is no negligence on the part of the driver, that the tribunal ought to have seen that both the respondents are liable for payment of compensation. Hence, to set aside the award of the tribunal by granting compensation as prayed for.

2. Heard the learned counsel for the appellant/claimant and also learned counsel for the 2nd respondent-Insurer and perused the material on record.

3. The 2nd respondent-Insurer contested the claim saying there is no policy covering risk to make the Insurer liable and there is no proof of driver got valid driving license and Insurer cannot be made liable.

The tribunal ultimately having held the policy covers the risk for policy not exhibited to avoid from the vehicle insured as referred in the M.V.I. report relevant column of Ex.A.3 with insurance and policy particulars, however, dismissed the claim saying rash and negligent driving is not proved.

4. The very manner of the accident of the vehicle turned turtle due to which the claimant sustained injuries itself speaks the rash and negligent driving for no more to prove in proof of the same besides said fact is establishing in support of the oral evidence of P.W.1 by Ex.A.1 FIR, Ex.A.4 charge sheet, Ex.A.3 M.V.I. and Ex.A.2 wound certificate. Thus, the owner and Insurer cannot be made liable to compensate the claimant.

5. Now coming to the quantum of compensation the appellant/ claimant is entitled to is concerned, Ex.A.2 wound certificate shows there is compound fracture of both bones of left leg that was issued by the Government hospital. Since there is no record to show other than Ex.A.6 O.P.book of he was treated by incurring any expenditure, specifically for compound fracture sustained out of the accident dated 23.02.1999, an amount of Rs.25,000/- and Rs.5,000/- towards loss of earnings, medical expenses, attendant charges, transport charges and extra nourishment is just to award.

6. In the result, the appeal is partly allowed by enhancing the compensation from Rs.25,000/-(granted basing on interim order by the tribunal) to 30,000/- with interest at 7.5% p.a. from the date of petition till date of realization. Both the respondents are jointly and severally liable to pay compensation within one month from the date of receipt of this award. On deposit by the respondents or execution and recovery from the respondents, the claimant is permitted to withdraw the same. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 23.03.2016
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