

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.NO.418 OF 2013

JUDGMENT:

This appeal is filed by the appellant/petitioner against the award and decree, dt.02.09.2005 passed by the Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Mahabubnagar in O.P.No.404 of 2000 filed by him under Section 166 of Motor Vehicles Act, 1988 and Rule 514 of Andhra Pradesh Motor Vehicles Rules, 1994 seeking compensation of Rs.1,00,000/- for the injuries sustained by him in a motor vehicle accident occurred on 23.04.1998, wherein the Tribunal fastened liability on the first respondent-owner of the jeep.

The case of the appellant is that on 23.04.1998 at about 6.15 p.m., when he was travelling in a jeep bearing Regn.No.AP02/9019 from Wanaparthi to go to Kothakota and from there to his village Addakal and when the accident jeep was proceeding in the limits of Rajapet Village, the driver of the jeep drove it in a rash and negligent manner and dashed against the APSRTC bus coming opposite to the jeep. As a result, the appellant and others sustained multiple bleeding

injuries and the driver of the jeep died on the spot. The appellant was immediately shifted to the Government Hospital, Wanaparthy and there he was inpatient till 12.05.1998. He was operated upon abdomen and spleen. The appellant continued treatment for another six months and spent Rs.20,000/-. He was doing Electrician work and was earning Rs.4,000/- per month. He sustained permanent disability due to the accident and was put to loss of earnings. He was subjected to much physical pain and mental agony due to the injuries. He claimed compensation of Rs.1,00,000/-. It is also his case that Wanaparthy Rural Police Station registered a case in Cr.No.20 of 1998 against the driver of the jeep. Since the accident jeep was insured with the second respondent and the policy was in force at the time of the accident, he filed the said O.P.

The first respondent remained exparte.

The second respondent-Insurance Company filed counter stating that the accident took place in the early hours, which occurred due to the rash and negligent driving of the driver of the jeep and therefore, the appellant is not entitled to claim compensation against the owner of the bus. It is also stated that the appellant is travelling in the accident jeep as unauthorised passenger and the compensation claimed by him is

excessive.

Basing on the evidence of PW.1 and Exs.A-1 to A-8 and Ex.B-1, the court below awarded compensation at Rs.30,000/- fixing the liability on the first respondent. Hence, the present appeal.

The learned counsel for the appellant submits that the second respondent has not proved that the vehicle is a commercial vehicle or a private vehicle. As such, the finding of the Tribunal that the second respondent is not liable for payment of compensation is erroneous.

Ex.B-1 is insurance policy. The court below in para 14 of its order observed that there is a restriction with regard to limitation to use the accident jeep for hire or reward. It was also observed that in Ex.B-1 it was clearly mentioned that the accident jeep shall be used to only for social, domestic and pleasure purposes and for the insured's own business. PW-1 during cross-examination by the second respondent insurance company deposed that eight persons are in the jeep at the time of the accident and he also admitted that the jeep was a shuttle jeep carrying passengers from Wanaparthi to Kothakota and from Kothakota to Wanaparthi. The trial court basing on the evidence and admission of PW-1, held that there was violation

of restrictions mentioned in the insurance policy Ex.B-1 with regard to the use of the accident jeep. The trial court also referred to a decision of this court reported in **NEW INDIA ASSURANCE COMPANY LIMITED, ONGOLE VS. SANDEPUDI MARIYAMMA AND OTHERS**^[1] and held that the second respondent insurance company is not liable to pay compensation to the petitioner and the first respondent owner of the accident jeep alone is liable to pay compensation to the appellant.

In view of the categorical finding of the court below, which is based on the evidence of PW-1, I do not see any error in the award passed by the court below.

The appeal is, therefore, dismissed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dt.04.01.2016
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