HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 289 OF 2006

JUDGMENT:

The appellant and his counsel called absent. No representation. Earlier the appellant sought adjournment, but could not serve notice on respondent No.1. This appeal is filed in the year 2006. Counsel for respondent No.2 is present.

Heard learned counsel for respondent No.2. In the light of the above circumstances, it is appropriate to dispose of the matter on merits.

This appeal is preferred by the appellant against the judgment, dated 31.10.2005, passed by the VI Additional District Judge, F.T.C., Krishna District at Machilipatnam (for short, "the Trial Court") in M.V.O.P.No.287 of 2003.

For convenience, the parties are hereinafter referred to as they are arrayed in the Trial Court.

The brief facts of the case are that on 21.11.2002, the appellant along with his driver started from Vijayawada with the load of poultry feed in lorry bearing No.AP 9 V 959 and when it reached Gowripatnam village on 22.11.2003, at about 5.00 a.m. the 1st respondent, driver of the lorry bearing No.AP 37 U 1962, drove the lorry in a rash and negligent manner and dashed the appellant's lorry and as a result the appellant sustained fracture to his both legs i.e, left femor, right leg and fibia middle. Police registered a case in Crime No.148/02 under Sections 337 and 338 IPC and filed charge sheet against the 1st respondent in the Court of II Additional Judicial First Class Magistrate, Kovvuru. The appellant took treatment in

Government hospitals at Kovvuru and Rajahmundry and thereafter admitted in Rameeza Orthopedic Center, Vijayawada and underwent treatment from 22.11.2002 to 16.12.2002. The doctors conducted operation to his both legs and the appellant spent more than Rs.1,00,000/- for treatment and medical expenses. The appellant was working as cleaner and was earning Rs.3,000/- per month. He filed M.V.O.P.No.287 of 2003 before the trial Court under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.2,50,000/- for the injuries sustained by him in the motor vehicle accident.

The 3rd respondent, insurance company, filed counter denying the manner in which the accident has occurred and also the alleged rash and negligent driving of the driver of the crime lorry. It has also denied its liability and disputed the quantum of compensation claimed by the appellant as excessive.

The trial Court, on consideration of the pleadings, evidence and the documents available on record, passed an award granting compensation of Rs.1,14,800/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization making respondent Nos.1 and 2 jointly and severally liable to pay the same.

Being aggrieved, the appellant filed this appeal for enhancement of compensation and also to fix the liability on respondent No.3, Oriental Insurance Company Limited.

The points for determination are:

1. Whether there was rash and negligence on the part of the driver of the lorry bearing No.AP 37 U 1962?

2. Whether the compensation granted in favour of the appellant is just?

3. Whether respondent No.3 shall be made liable to pay the compensation, since the trial Court has dismissed the claim against it?

The evidence of PW.1 reveals that the lorry bearing No.AP 37 U 1962 was driven in rash and negligent manner and in high speed and caused injuries to the appellant as exhibited in Ex.A2, wound certificate. PW.2, Doctor, Sk. Kalesha Vali, who treated the appellant, also corroborated the evidence of PW.1 and medical bills marked as Exs.A3, A5, A6 and Ex.A8 - 12 x-ray films. Ex.A1 is the copy of FIR. With regard to rash and negligent driving on the part of the driver of the lorry bearing No.AP 37 U 1962, the trial Court had given elaborate reasons. The findings are based on evidence and documents. Therefore, there is nothing to take a different view.

The next point is whether the Tribunal is just in granting compensation of Rs.1,14,800/-.

While dealing with the relevant issue, the Tribunal has examined in detail the evidence of PWs.1, 2 and 3 and also relied on the medical record marked as Exs.A2, A3 and A5 to A8 and ultimately held that the appellant is entitled for compensation of Rs.1,14,800/- under different heads. The trial Court, after considering all the documents, has taken into consideration the age of the appellant as 30 years for determination of compensation. Since there is no infirmity, no interference is warranted by this Court and what is determined by the trial Court is appropriate and just. The rate of interest granted by the trial Court @ 7.5% per annum is also just and reasonable.

The copy of insurance policy of the vehicle in question has not been marked either by the petitioner/appellant or by the respondents.

RW.1, Assistant Divisional Manager working in respondent No.3, insurance company, in his examination-in-chief deposed that Ex.B1 is the copy of policy. As per the policy, the driving licence of the driver was not in force. It expired in 1993, but the accident occurred on 22.11.2002, which is violative of the terms and conditions of the policy. In his cross-examination, RW.1 stated that the appellant is the cleaner of the crime vehicle.

The evidence of RW.2, Senior Assistant in R.T.A. Office, reveals that the 1st respondent is having valid driving licence from 06.01.1987 to 05.01.1993 and as per the record, the 1st respondent has not renewed the licence from 06.01.1993 onwards and that the licence is not in force. Ex.X2 is the copy of driving licence of the 1st respondent and Ex.X3 is the copy of history sheet of driving licence. In his cross-examination, RW.2 stated that respondent No.1 can renew the licence in any office, but he has to take the clearance certificate from his office.

Copy of policy of insurance company is available in records. Ex.B1 is marked as copy of insurance policy, but it contains the details of driving licnece of respondent No.1, driver of the crime lorry. As seen from the record, there is valid policy of insurance. It is also evident from the record that Respondent No.1, driver of the lorry bearing No. AP 37 U 1962, has no valid driving licnece on the date of occurrence of the accident. So under these circumstances, it is not appropriate to tag any liability on respondent No.3, insurer of the crime lorry. While determining the issues, the Trial Court has not fixed any liability against respondent No.3. No other opinion can be substituted.

In view of the facts and circumstances of the case, there is no evidence to tag the liability on respondent No.3. The Tribunal did not err in dismissing the claim against respondent No.3. There are no mitigating circumstances to allow enhancement of compensation and tag liability against respondent No.3. The appeal is liable to be dismissed.

In the result, the appeal is dismissed. No costs.

Miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

DR. SHAMEEM AKTHER, J

Date: 20.01.2017.
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