

THE HON' BLE SRI JUSTICE M. S. K. JAISWAL

MACMA.NO. 741 OF 2010

ORDER:

This appeal is preferred by the claimant/injured against the order dated 17.04.2009 in MVOP.No.180 of 2007 on the file of the Special Judge for Trial of case under SC, ST (PoA) Act – cum – VI Additional District and Sessions Judge, Kurnool –cum –Chairman, Motor Accidents Claims Tribunal, Kurnool.

2. The brief facts of the case are that the appellant/injured sustained injuries in a trolley accident occurred on 19.05.2006, near Shakuntala Kalyana Mantapam, Nandyal Road, Kurnool. The first respondent is the owner of the vehicle, which is involved in the said accident and the 2nd respondent is the insurance company with whom the trolley auto bearing No.AP.21.X.3676 was insured.

3. According to the injured, due to the rash and negligent driving of the driver of the 1st respondent's vehicle, the vehicle hit him while he was crossing the road due to which he fell down and sustained injuries. On the other hand, the 2nd respondent submits that the petitioner had crossed the road negligently and hence met with the accident and sustained injuries. However, the Tribunal found that due to the acts of the driver of the trolley auto, the accident was occurred. The Tribunal further held that though the name of the insured tallied, in view of the discrepancy in the identification of the crime vehicle, and as no evidence is produced by Respondent No.1 that he insured his vehicle with the 2nd respondent, and as the 2nd respondent could prove that the alleged vehicle involved in the accident was not insured with him, the 2nd respondent should not be

held liable to compensate the claimant, in the absence of any contract between him and the 1st respondent with regard to the crime vehicle. Therefore, the Tribunal had fixed the liability on the 1st respondent alone to pay the compensation, which was quantified at Rs.1,49,234/- in all counts, and directed the 1st respondent to pay the same to the injured. Aggrieved by the same, the appellant/injured preferred the present appeal dissatisfying with the quantum of compensation and exempting the 2nd respondent/ Insurance Company from liability.

4. Heard both the learned counsel and considered the material on record.

5. The Tribunal has determined the compensation to the injured at Rs.1,49,234/- as against the claim of Rs.8,00,000/-. Having done so, the Tribunal has absolved the liability of the Insurance Company on the ground that there is discrepancy in the policy of the vehicle involved in the accident.

6. Briefly stated, the offending vehicle-AP.21X.3676, which as per the appellant/ claimant was insured by the 2nd Respondent-Insurance Company when it was purchased, mentioning the Chassis number and Engine Number, for the reason that the vehicle was not allotted any Registration Number. Ex.B.1 is the policy issued by the Insurance Company mentioning both engine and chassis numbers of the vehicle insured. However, the Engine and Chassis numbers mentioned in Ex.B.1 do not tally with the vehicle that is involved in the accident. Therefore, the Tribunal has exempted the Insurance Company from

the liability and fastened the liability only on the 1st Respondent-Owner of the vehicle to pay the compensation so awarded.

7. Along with the appeal, the appellant/ claimant filed a petition i.e., MACMA MP.No.2168 of 2010 to receive an endorsement said to have been made by the Insurance Company to the effect that the Chassis Number and Engine Number mentioned in Ex.B.1 are not correct and the correct numbers are as stated in the Endorsement, with effect from 26.06.2006, and the policy expires on 16.06.2007. The said endorsement clarifies the fact that the vehicle involved in the accident was insured by the Respondent/ Insurance Company only. The said document has been received by way of additional evidence in the present appeal as Ex.A7.

8. With regard to quantum of compensation, much reliance is placed by the learned counsel for the petitioner upon the income of the injured, which is also not been properly appreciated by the Tribunal. It is brought to the notice of the Court that Ex.A-5, which is the salary certificate of the injured, shows that the gross salary of the injured was Rs.24,000/-, as against which, the Tribunal took notional income of Rs.10,000/- in the year 2008 and determined the loss of earnings at Rs.30,000/- on the ground that the appellant, due to the injuries was required to take rest about three months.

9. Having carefully perused the entire material on record, I feel that this is a fit matter to be remanded to the Tribunal for fresh adjudication, and therefore, without expressing any opinion on the contentions raised by the appellant/ claimant, and in view of the fact that along with the appeal the endorsement said to have made by the

Insurance Company has been filed, whose authenticity or otherwise needs to be proved before the trial Court. Therefore, the matter is liable to be remanded to the trial Court for giving fresh opportunity to both the parties to prove their contentions.

10. In the result the appeal is disposed of setting aside the order under appeal and remitting the matter to the Tribunal for consideration and disposal afresh on all the issues, by giving fresh opportunity to both the parties. The Registry shall remit the records to the Court below forthwith, along with the document that have been filed along with MACMAMP.No.2168 of 2010, which has been marked by this Court as Ex.A.7. The Tribunal is directed to dispose of the matter within two months from the date of receipt of the records. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

Dt.04-10-2017
Kv

M. S. K. JAISWAL



THE HON' BLE SRI JUSTICE M. S. K. JAISWAL



MACMA.NO. 741 OF 2010

JUDGMENT

04..10..2017

Kv