

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

MACMA No.1425 of 2006

JUDGMENT:

Aggrieved by the award of compensation of Rs.1,45,900/- by the learned Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Warangal, (for short 'the Tribunal'), to the petitioner in M.V.O.P.No.524 of 2000 filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), for the injuries sustained by him in a motor vehicle accident, against the claim of Rs.2,00,000/-, the present appeal is preferred under Section 173 of the Act.

Appellant herein is the petitioner, while respondent No.1 is the owner of the offending vehicle, respondent No.2 is the insurer of the offending vehicle and respondent No.3 is the branch office of respondent No.2, in M.V.O.P.No.524 of 2000.

For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in M.V.O.P.No.524 of 2000.

The facts of the case, in brief, are as under:

On 03.02.2000, at about 9.30 a.m., petitioner along with a rice bag was travelling by lorry bearing No.AP13 T 7979 to return to his village and when the lorry reached a culvert at the

outskirts of Seetarampur Village, it fell down by the side of the road due to rash and negligent driving of its driver resulting in multiple injuries to the petitioner. Immediately thereafter, he was shifted to Gandhi Hospital, Secunderabad and underwent treatment. Therefore, he sought compensation of Rs.2,00,000/-.

Respondent No.1 remained *ex parte*.

Respondents 2 and 3 filed counter denying the occurrence of accident and stating that the petitioner was travelling by the goods vehicle as an unauthorized passenger. They stated that they are entitled to claim protection under Sections 140, 149 and 170 of the Act and they sought to dismiss the claim.

Based on the above pleadings, the Tribunal framed three issues. To substantiate the claim, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to Ex.A.90 were marked and on behalf of respondents 2 and 3, R.W.1 was examined and Exs.B.1 to B.3 were marked.

Having heard the learned counsel and having found that the alleged accident occurred due to rash and negligent driving of driver of offending lorry, the Tribunal held the issue in favour of the petitioner. The Tribunal after appreciating the evidence of P.Ws.1 and 2 and Exs.A.1 to A.90, granted Rs.25,000/- towards loss of earnings, Rs.15,900/- towards medicines, Rs.1,000/- towards extra-nourishment, Rs.3,000/- towards transportation to

hospital, Rs.1,000/- towards damages to clothing, and Rs.1,00,000/- towards pain and suffering, loss of earning capacity and permanent disability, in total, Rs.1,45,900/- as compensation to the petitioner. Further, the Tribunal found that the insurance policy, Ex.B.1, does not cover the risk of unauthorized passenger and thereby, held that respondents 2 and 3 are not liable to pay any compensation to the petitioner and respondent No.1 is liable to pay just compensation to the petitioner.

On 28.06.2016, this appeal stood automatically dismissed against respondent No.1 as no notice was served upon him.

Learned counsel for the petitioner contended that the Tribunal came to an erroneous conclusion that the petitioner was an unauthorized passenger but not a gratuitous passenger. He also contended that the Tribunal has not awarded any specific amount towards permanent disability and thereby, prayed the Court for enhancement of compensation.

On the other hand, learned Standing Counsel appearing for respondents 2 and 3 submitted that the order impugned needs no interference by this Court and thereby, prayed to dismiss the appeal.

A perusal of the order under appeal shows that there is no dispute with regard to the occurrence of alleged accident on 03.02.2000 due to rash and negligent driving of driver of

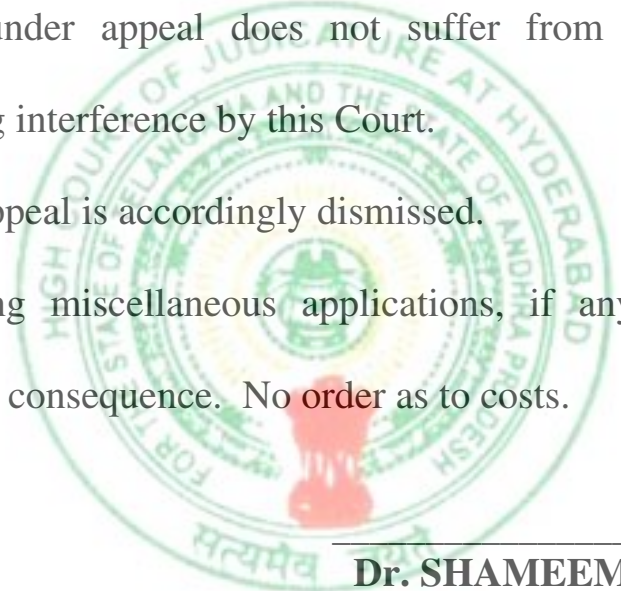
offending lorry. It is to be seen that while determining the quantum of compensation, the Tribunal has rightly appreciated the oral evidence of P.Ws.1 and 2, and the documentary evidence, Exs.A.1 to A.90, and awarded the compensation of Rs.1,45,900/- to the petitioner. This finding is based on records. In view of the same, this Court cannot record a different finding on this issue. With regard to the liability of the insurance company to pay compensation to the petitioner, it is to be noted that Ex.B.1 is the copy of insurance policy, which was valid from 11.03.1999 to 10.03.2000. It is clear from the evidence of R.W.1 and Exs.B.1 to B.3 that at the time of accident, there was valid insurance of offending lorry. But as per the terms of policy, the risk was covered only for owner of the goods and paid drivers/workmen. It is also in dispute that the petitioner along with a rice bag was travelling in the offending lorry. As per Ex.A.1 – CC of FIR and Ex.A.2 – CC of Charge Sheet, there was fish load in the lorry. There is no mention of claimant travelling in the lorry with rice bag. As such, neither the claimant was a driver nor a workman employed in the lorry. He cannot be held as owner of goods, as such, he was an unauthorized passenger. Therefore, the Tribunal rightly absolved the insurance company from its liability to pay compensation to the petitioner. Though it is pleaded by the petitioner that he is entitled to claim

compensation from the insurance company, he did not submit any material to prove that he was owner of goods. In view of the same, the Tribunal after appreciating the evidence on record and considering the legal propositions, rightly held that respondents 2 and 3 are not liable to pay any compensation to the petitioner and respondent No.1, owner of the offending lorry, is liable to pay compensation to the petitioner.

In the above circumstances, this Court is of the opinion that the order under appeal does not suffer from any infirmity necessitating interference by this Court.

The appeal is accordingly dismissed.

Pending miscellaneous applications, if any, shall stand dismissed in consequence. No order as to costs.



Dr. SHAMEEM AKTHER, J

27th JANUARY, 2017.

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