

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.2182 of 2009

JUDGMENT:

1. The appellant-respondent No.2 aggrieved by the award and decree dated 2.1.2008 in MVOP No.475 of 2005 preferred this appeal besides other grounds on the ground that the Tribunal having found that the 1st respondent is liable to pay the compensation as the driver of the Car is rash and negligent and that the 1st respondent has no insurance policy at the time of accident, ought not have fastened the liability on the appellant-2nd respondent. Further, it is contended that the finding of the Tribunal that both the respondents are jointly and severally liable to pay the compensation is misconceived.

2. For the sake of convenience, the status of the parties will hereinafter be referred to as arrayed in MVOP.

3. The claim of the claimant in brief is as follows:

On 20.9.2002 at about 10.30 a.m., the claimant along with his friend C. Munikrishna Reddy was going on a Motor cycle bearing No.AP 03-J-6774 from Tirumala to Tirupati and when he reached a rubber tree near Asthanamandapam, filter house, RBGH road, Tirumala, an Ambassador Car bearing No.ADC-6799 owned by the 1st respondent driven by its driver in a rash and negligent manner, dashed the claimant's motor cycle, as a result of which, the claimant sustained grievous injuries viz., fracture to his right thigh and bleeding injuries on scalp, right leg, lower lip, knees and left shoulder. Immediately, he was shifted to CMC Hospital, Vellore, where his right femur bone was operated and his right femur was nailed. The claimant was bedridden for six months in spite of spending huge amount towards medicines.

4. The contention of the 1st respondent in the counter is that there is no negligence on the part of the driver of the Ambassador car. The claimant and his friend came in a rash and negligent manner and dashed the Ambassador Car, and the wound sustained by the claimant is simple in nature.

5. The contention of the 2nd respondent in the counter is that the claimant insured his motor cycle bearing No.AP 03 J 6774 with it and that there is no liability to pay the compensation to any third party. The insured under policy No.612700310205630 is not sued in the above case to indemnify the risk of the third parties. Therefore, the 2nd respondent is not liable to pay the compensation.

6. The Tribunal having considered the pleadings of both the parties settled the following issues:

(1) Whether the driver of the Car bearing No.ADC 6799 drove the same in a rash and negligent manner and caused accident on 20.09.2002 and as a result the petitioner sustained injuries?

(2) Whether the petitioner is entitled for compensation? If so, to what amount?

(3) To what relief?

7. On behalf of the petitioner-claimant, P.Ws.1 to 5 were examined and Exs.A1 to A12 were marked. The 2nd respondent examined R.W.1 and got marked copy of Insurance policy as Ex.B1.

8. The contention of the appellant-2nd respondent is that since the appellant is not the insurer of the Ambassador car, it is not liable to pay the compensation, whereas the claimant contended that the Tribunal awarded the compensation against the respondents basing on Ex.A8-accident information report under Form No.54.

9. There is no dispute with regard to the rash and negligence on the part of the driver of the Ambassador car and that on 20.9.2002 at about 10.30 am., the driver of an Ambassador Car bearing No.ADC 6799 drove the car in high speed and caused the accident. Against that evidence, there is evidence of R.W.1, on behalf of Insurance company, who deposed that since the Ambassador car is not insured, it is not liable to pay any compensation. The Tribunal considered the evidence of P.W.1 supported by Ex.A2-certified copy of charge sheet and Ex.A3-certified copy of judgment in C.C.No.65 of 2003, which clearly shows that the driver of the Ambassador Car bearing No.ADC 6799 pleaded guilty in C.C.No.65 of 2003 and he was sentenced to pay a fine of Rs.500/-. The Tribunal having considered the evidence of P.W.1 and Exs.A2 and A3, found that the driver of the Ambassador Car drove the car in a rash and negligent manner and caused the accident.

10. With regard to Ex.B1-policy bearing No.612700310205630, it is the policy covering the risk of the motor cycle bearing No.AP 03 J 6774 and it does not pertain to the Ambassador car. The Tribunal basing on the evidence and the material available on record came to a right conclusion that the 1st respondent has no Insurance policy at the time of accident. Against that, the claimant did not produce any oral or documentary evidence showing that the 2nd respondent is the Insurer of the Ambassador Car. The Tribunal rightly came to the conclusion that the Ambassador Car, which caused the accident, belongs to the friend of P.W.1 and it has no Insurance policy at the time of accident.

11. Having considered the entire material on record, the Tribunal came to a right conclusion that the 1st respondent alone is liable to pay the compensation to the claimant. But at paragraph No.17 of the Judgment,

the Tribunal erroneously concluded that respondents Nos.1 and 2 are jointly and severally liable to pay the compensation, forgetting the earlier finding in issue No.1 that the 1st respondent alone is liable to pay the compensation.

12. In the circumstances discussed above and the findings therein, I find that the finding of the Tribunal awarding compensation against respondents Nos.1 and 2 jointly and severally is erroneous since the 2nd respondent is not the insurer of the Ambassador car. In view of the clear finding of the Tribunal that the accident was due to the rash and negligent driving of the driver of the Ambassador Car bearing No.ADC 6799, which has no insurance policy, the 2nd respondent is not liable to pay the compensation and it is the 1st respondent, who is the owner of the Ambassador car, alone is liable to pay the compensation. Accordingly, I find that the liability has to be modified.

13. In the result, the appeal is allowed confirming the other findings and modifying the liability fixed by the Tribunal directing respondents Nos.1 and 2 to pay the compensation, and ordered that the 1st respondent alone is liable to pay the compensation awarded by the Tribunal. The 1st respondent is directed to deposit the compensation amount as per the Award of the Tribunal, within a period of 30 days from the date of receipt of a copy of this judgment. No costs. On such deposit, the claimant is permitted to withdraw the same. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N. BALAYOGI

Date: 5th October, 2017
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