

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.2622 of 2005

JUDGMENT:

Heard and perused the material available before this Court.

Pursuant to the accident, which occurred on 10.01.2002 near the road leading to Ramakrishna colony, Cherlapalli on the Highway from Karimnagar to Hyderabad, the first respondent herein-owner of Ambassador car, bearing No.APR-8363, filed O.P.No.453 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar, claiming a sum of Rs.75,000/- towards damages caused to the Ambassador car bearing No.APR 8363. Respondents 1 and 2 in the O.P., who are the driver and owner of the offending vehicle-lorry bearing No.AHK-5354, filed counter denying the averments in the O.P., filed by the first respondent-claimant. The second respondent herein also contested the matter by filing counter.

On the basis of the material available, the Tribunal framed the following issues for consideration:

1. Whether the accident took place due to rash and negligent driving of vehicle i.e. lorry bearing No.AHK 5354 by its driver?
2. Whether the petitioner is entitled to compensation and if so, to what amount and from whom?
3. To what relief?

During the course of trial, on behalf of the claimant P.Ws.1 to 3 were examined and Exs.A1 to A7 were marked. On behalf of the respondents no oral evidence was adduced but Ex.B1-attested copy of the policy was marked.

On issue No.1, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AHK 5354. While answering issue No.2, the Tribunal awarded a sum of Rs.30,000/- towards damages, while directing the insurance company to pay a sum of Rs.6000/- out of the said amount, and further directed the respondents 1 and 2, who are the appellants herein, to pay the rest of the amount of Rs.24,000/- to the claimant with subsequent interest @ 9% p.a. Hence, the present appeal is by the driver and owner of the offending vehicle-lorry.

The sum and substance of the case of the appellants, in the present appeal, as advocated by the learned counsel for the appellants, is that the Tribunal grossly erred in directing the driver and owner of the offending vehicle-lorry to pay Rs.24,000/- out of the total amount awarded and the Tribunal should have made the insurance company also jointly and severally liable. It is also the submission of the learned counsel that there is absolutely no basis for the Tribunal to apportion the amount in such a fashion.

In elaboration, it is submitted by the learned counsel for the appellants that totally the owner of the vehicle paid a sum of Rs.2934/- i.e. Rs.2779/- towards Act policy; Rs.75/- towards third-party property damage; Rs.50/- towards non-fare paid passenger and Rs.30/- towards driver and owner. According to the learned counsel, the Tribunal should have taken into account the said amount of premium of Rs.75/- paid towards third-party property damages and should have made the insurance company also liable

jointly and severally in respect of the entire extent of the awarded amount.

A perusal of the order under challenge discloses that, except apportioning the amount between the respondents 1 and 2-the driver and owner on one hand and the insurance company on the other hand, the Tribunal did not indicate any reason for doing so and the said aspect, in the considered opinion of this Court, raised by the learned counsel for the appellants, needs to be considered in the light of Ex.B1-policy and the said aspect missed the attention of the Tribunal. Therefore, this Court is of the opinion that the matter requires re-consideration by the Tribunal.

For the aforesaid reasons, the appeal is allowed, setting aside the order, dated 26.09.2003, in O.P.No.453 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar, and the matter is remanded to the Tribunal for fresh disposal. It is made clear that, if any amount is paid already to the claimant, pursuant to the order of the Court below, the same shall not be realised. It is also made clear that the recovery or adjustment of any amount shall be subject to the outcome of the said order.

As a sequel thereto, miscellaneous Petitions pending, if any, in this appeal, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI,J

21st December, 2017
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