

HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2393 OF 2006

JUDGMENT:

Aggrieved by the dismissal of O.P.No.529 of 2001 on 16.09.2006 by the learned Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Adilabad, this appeal is filed by the appellant/claim petitioner.

2. The case and contention of the appellant/claim petitioner is that he claimed compensation of Rs.2 lakhs against respondents 1 to 3 herein for the damages caused to his Jeep Tempo Trax No.AP.1.A.7299 in a motor accident that occurred on 19.01.1997 at 6.40 a.m., at Nambur Railway Station, due to the rash and negligent driving of the lorry bearing No.AP.3.T.8389 by its driver. On the fateful day, i.e. 19.01.1997, when the Jeep reached Nambur Railway Station, the lorry bearing No.AP.3.T.8389 came in opposite direction; the driver of the Jeep took it to the extreme left side of the road; even then the lorry dashed the Jeep due to which the Jeep was completely damaged; the wheels and engine were separated from its body and the inmates also sustained injuries. Immediately, the inmates of the Jeep lodged report to the Police and a case in Cr.No.16 of 1997 under Sections 337, 304-A and 427 IPC was registered against the driver of the lorry and he was also charge-sheeted.

3. Learned counsel for the appellant-claim petitioner contended that the Jeep was completely damaged and the documents were

submitted to the insurance company; the Tribunal failed to appreciate the facts and circumstances and erred in dismissing the claim petition and ultimately prayed to set aside the order under appeal and grant compensation of Rs.2 lakhs, as prayed by him.

4. On the other hand, learned counsel for the 2nd respondent herein, i.e. the insurer of the lorry, contended that there was no rashness and negligence on the part of the driver of the lorry; the claim itself is not maintainable; the owner of the Jeep failed to prove the damage caused to the Jeep and the Tribunal had recorded findings on all aspects based on the evidence, there is no need to substitute any other opinion and prayed to dismiss the appeal.

5. In view of the contentions put forth on both sides, the following point arises for determination:

1. Whether the appellant/petitioner is entitled for compensation as prayed for?
2. To what result?

6. The appellant-claim petitioner got himself examined as P.W.1 and got marked Exs.A.1 to A.7. Ex.A.1 is the certified copy of FIR, A.2 is the certified copy of charge sheet. Both the documents reveal rashness and negligence on the part of the lorry bearing No. AP.3.T.8389. Ex.A.3 is the certified copy of the report of the Motor

Vehicle Inspector, wherein at Column No.8, the following damages are shown in respect of the Jeep bearing No. AP.1.A.7299:

- “i. Steering wheel compressed and front right side wheel and suspension completely damaged and front right wheel dislocated from the vehicle;
- ii. Front right side mudguard, bumper, headlight completely damaged;
- iii. Windscreen glass broken, damage to the right side doors due to impact of the accident.”

7. Ex.A.1, certified copy of FIR reveals that it was registered for the offences under Sections 337, 304-A and 427 IPC against the driver of the lorry. Ex.A.2 is the charge sheet where the driver of the lorry was prosecuted for the offences under Sections 337 and 338 IPC. Appellant-claim petitioner deposed as P.W.1 about his ownership of the Jeep and the extent of damage caused to it and stated that the Jeep was completely damaged in the accident that occurred on 19.01.1997. So, admittedly, he is an eyewitness to the occurrence of the accident. Except the oral testimony of P.W.1, there is no other testimony. The whole case is based on the criminal case record, i.e. Ex.A.1 and Ex.A.2 registered in connection with the accident. Both the documents reveal rashness and negligence on the part of the driver of the lorry bearing No. AP.3.T.8389. The contention of the 2nd respondent herein, i.e. the insurer of the lorry, is that there was no

rashness or negligence on the part of the driver of the lorry and no damage was caused to the Jeep. However, the 2nd respondent herein, i.e. the insurer of the lorry, did not choose to examine any witness to substantiate its contention and did not choose to file any document in support thereof. Ex.A.6 is a copy of the letter addressed by the appellant-claim petitioner to the 3rd respondent herein, i.e. the insurer of the Jeep in question. Ex.A.7 is the reply thereto, which reveals that the 3rd respondent-insurer of the Jeep is not responsible to pay any compensation towards damages caused to the Jeep. In these circumstances, there is no reason to disbelieve Exs.A.1 and A.2. Under Exs.A.1 and A.2, there is clear mention about the rashness and negligence on the part of the driver in driving the lorry. There is no reason for the investigating officer to lay false charge against the driver of the lorry. Therefore, it is safely concluded that the accident occurred only due to the rashness and negligence on the part of the driver in driving the lorry. In view of the other evidence on record, i.e. Ex.A.3, report of the MVI, it can also be safely concluded that the Jeep is damaged as mentioned in the said document. As per the same, it is clear that the driver of the lorry is exclusively responsible for the accident. Admittedly, the appellant-claim petitioner has not got marked any document to show the estimation issued to repair the Jeep. His contention is that he sent the documents to the 3rd respondent, insurer of the jeep, however, no amount was paid by the 3rd

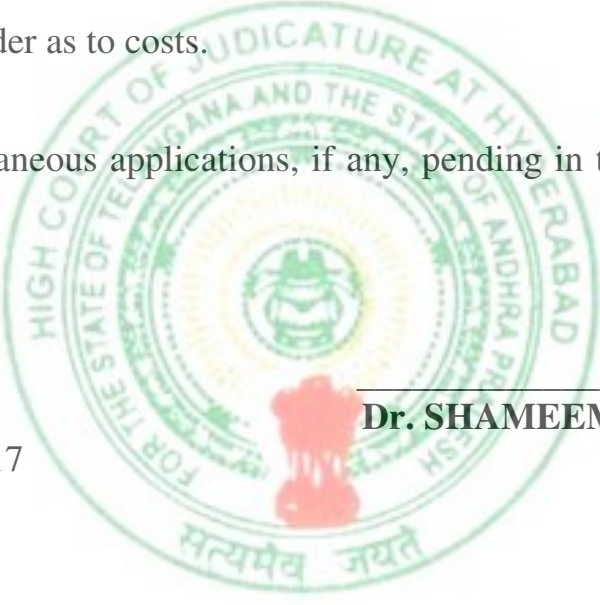
respondent-insurer towards damages caused to the Jeep and a reply, Ex.A.7, was given to the appellant-claim petitioner that the Jeep was plying as hire-vehicle and the owner had violated the terms and conditions of the policy of insurance and, as such, the claim of the appellant-claim petitioner was negated. The appellant-claim petitioner has also not taken any steps to produce the estimation submitted to the insurance company towards damages caused to the Jeep to believe that the damage caused was to the tune of Rs.1,70,000/-. As seen from Ex.A.3, report of the MVI, the jeep is damaged as stated therein. On that score, the appellant/petitioner is entitled for compensation, which is fixed at Rs.50,000/-. As seen from the entire evidence on record, it is clear that the driver of the lorry is responsible for the occurrence of the accident. The said lorry is validly insured under Ex.A.4, certified copy of insurance policy. Further, there is no evidence that the driver and owner of the lorry had violated the terms and conditions of the insurance. In these circumstances, respondents 1 and 2 herein, being the owner and insurer of the lorry bearing No.AP.3.T.8389 are jointly and severally liable to pay the compensation of Rs.50,000/- with interest at 7.5% per annum from the date of filing of the claim petition, till deposit, which is ordered accordingly. The claim as regards respondent No.3 is dismissed. At this stage, it is to be noted that the appeal insofar as respondent No.1-owner of the vehicle was dismissed for default vide

order dated 05.07.2016. However, in view of the judgment of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao**¹, even in the absence of insured-owner of the vehicle at the appellate stage, claimant's appeal is maintainable against the insurer. On deposit of the amount, appellant is entitle to withdraw the entire amount.

8. In the result, the appeal is allowed in part to the extent indicated above. No order as to costs.

Miscellaneous applications, if any, pending in this appeal shall stand closed.

March 10, 2017
MRR


Dr. SHAMEEM AKTHER, J

¹ [2001(1) ALT 495] {APHC - DB}