

THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

MA.CMA. Nos.1611 and 1612 of 2010

COMMON JUDGMENT:

Both these appeals are filed against separate orders and decrees dated 18.06.2010 wherein and whereby the learned Chairman, Motor Accident Claims Tribunal-cum-III Additional District and Sessions Judge (FTC), Nizamabad, dismissed O.P.Nos.1008 and 1273 of 2004 filed by appellants/claimants on the ground that they could not prove that the accident occurred due to rash and negligent driving of driver of vehicle bearing No.AP25 H 3348 and that they sustained injuries in such accident.

Learned counsel for appellants submits that Ex.A.5 is an RC book of Bajaj Chetak Scooter bearing No.AP25 H 3248 but contents of FIR and investigation of police show that respondent No.1 drove his TVS Victor bearing No.AP25 H 3348 in a rash and negligent manner and dashed the appellants' motor cycle bearing No.AP25 F 7388 and that the Tribunal without considering the same, passed impugned orders dismissing O.P.s filed by appellants.

Learned Standing Counsel for United India Insurance Company Limited appearing for respondent No.2 submits that merely RC book of vehicle bearing No.AP25 H 3248 was marked but owner of such vehicle was not examined so as to prove that it was not the offending vehicle and furthermore, respondent No.2 is not the insurer of that vehicle; that appellants could not prove either Bajaj Chetak Scooter bearing No.AP25 H 3248 or TVS Victor bearing No.AP25 H 3348 is the offending vehicle and that the Tribunal rightly observed that vehicle bearing No.AP25 H 3248 and vehicle bearing No.AP25 H 3348 are not one and the same and thereby, passed impugned orders dismissing aforesaid O.P.s.

In this case, it is to be seen that in Ex.A.1 – Certified Copy of FIR, it is mentioned at one place that crime vehicle is TVS Victor bearing No. AP25 H 3348 and at another place, vehicle number is mentioned as AP25 H 3248 and even in Ex.A.2 – Certified Copy of charge sheet, crime vehicle is TVS Victor but vehicle number is mentioned as AP25 H 3248. However, a perusal of Ex.A.5 – RC book goes to show that it is of a Bajaj Chetak Scooter bearing No.AP25 H 3248. Further, as rightly observed by the Tribunal in the orders impugned and pointed out

by the learned Standing Counsel, either the owner of Bajaj Chetak Scooter or the person, who issued Ex.A.5, was not examined by appellants so as to prove that it was not the offending vehicle.

In view of the above, both these appeals are allowed by setting aside the impugned orders and remanding the matters to the Tribunal for fresh consideration.

At this juncture, learned Standing Counsel submits that as the matters are remanded, in case the appellants prove accident, respondent No.2 cannot be mulcted with interest by the Tribunal.

Hence, the Tribunal shall consider the said aspect while granting compensation, if any.

Consequently, Miscellaneous Petitions, if any pending, shall stand disposed of. No order as to costs.

A. RAJASHEKER REDDY, J

20th FEBRUARY, 2019.

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