

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 63 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, by the appellant-petitioner in M.V.O.P. No.743 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Vijayawada (for short, 'the Tribunal'), aggrieved by the order dated 06.09.2005 passed in the said O.P.

2. Heard both the learned counsel for the appellant and the learned Standing Counsel for respondent No.3-Insurance Company, apart from perusing the material available on record.

3. While dealing with the matter, the Tribunal has determined the compensation at Rs.1,00,000/- for the injuries sustained by the petitioner, but it has deducted 50% of the amount determined holding that there is contributory negligence on the part of the driver of the RTC bus, who is the appellant-petitioner.

4. Now the short point for consideration in this matter is, whether the Tribunal is justified in deducting 50% of the amount of compensation arrived by it?

5. It is evident from the record that no witness is examined on behalf of respondent No.3-Insurance Company. P.W.1, who is the appellant-petitioner, has clearly and categorically deposed the rashness and negligence on the part of respondent No.1-driver of the crime vehicle, i.e., lorry bearing registration No.AHH 2358. P.W.4-eyewitness has also corroborated the same. Exs.A.1 and B.1, which are certified copies of F.I.R. and charge sheet, also

reveal the rashness and negligence on the part of the driver of the lorry. P.W.4, who is a passenger in the RTC bus, has clearly and categorically deposed the rashness and negligence on the part of the driver of the lorry. Though the insurer contended the contributory negligence on the part of both the vehicles, there is no evidence on record. When there is clear and unimpeachable evidence on record, laying of charge sheet against both the drivers of the vehicles is of no use to respondent No.3-insurer. Further, nothing has been elicited in the evidence of P.Ws.1 and 2 to discard their testimony. Respondent No.3-insurer also ought to have examined the driver of the crime lorry to substantiate its defence. Therefore, without any oral evidence on record, the Tribunal ought not have recorded finding that there was rashness and negligence on the part of drivers of both the vehicles. Therefore, it is held that there was rashness and negligence on the part of the driver of the lorry bearing registration No.AHH 2358 only.

6. At this stage, learned counsel for the appellant contended that the compensation determined by the Tribunal is not adequate, as the appellant-petitioner had undergone two surgeries. As far as this point is concerned, the Tribunal has determined the compensation as Rs.1,00,000/- by taking all the facts and circumstances into account and relying on the documents filed by the appellant and ultimately, came to a conclusion that the appellant is entitled for a compensation of Rs.1,00,000/-. In the light of the oral evidence and the documents marked on behalf of

the appellant, the compensation awarded by the Tribunal is just and reasonable and it does not warrant any interference.

7. With the above observations, this appeal is allowed in part modifying the order dated 06.09.2005 passed by the Tribunal, by enhancing the compensation from Rs.50,000/- to Rs.1,00,000/- with interest at 7.5% per annum from the date of petition till realization. The petitioner is entitled to withdraw the entire amount of compensation. The order under challenge is confirmed in other respects. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

Date: 20.01.2017
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Dr. SHAMEEM AKTHER, J.

