

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A. C.M.A. No.313 of 2006

JUDGMENT :

This appeal is arising out of the judgment and decree, dated 11th July, 2002 in O.P.No.2284 of 2000 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad.

(2) The appellant is the petitioner in O.P. No.2284 of 2000 filed under Section 166 of Motor Vehicles Act claiming compensation of Rs.84,273/- for the damages caused to his auto in a motor vehicle accident.

(3) Based on the pleadings, the trial Court settled the following issues for trial :

- 1) Whether the accident took place due to the rash and negligent driving of the driver of the Bus bearing No.AP 10Z 6093 ?
- 2) Whether the petitioner is entitled for compensation, if so to what amount?
- 3) To what relief ?

(4) The trial Court, on consideration of the evidence on record, has held issue No.1 that the claimant failed to prove that the accident occurred due to the rash and negligent driving of the driver of the bus and also held issue No.2 holding that the claimant failed to prove the survey report - Ex.A2 by examining the surveyor. The trial Court held both the issues in favour of the APSRTC and dismissed the claim. Aggrieved by the award passed by the trial Court, the appellant has preferred this appeal.

(5) The brief facts of the case are that on 14.8.2000 at about 3.30 PM, while mini door auto bearing registration No.AP 11U 5642 belongs to the petitioner was proceeding on Dindi-Achampet road, a bus bearing registration

No.AP 10Z 6093 belongs to Respondent-APSRTC came with high speed in opposite direction in a rash and negligent manner and dashed against the petitioner's mini door auto causing death of driver of the auto and injuries to its passengers and heavy damages to the auto. The petitioner got surveyed the damages by surveyor, who estimated the damages to the petitioner's mini door auto at Rs.84,273/-. The Respondent-Corporation filed counter denying that the accident occurred due to the rash and negligent driving of the driver of the bus. It is further contended that the petitioner had suppressed the material information and is not entitled to the compensation. The trial Court, on consideration of the evidence, dismissed the claim.

(6) Heard the arguments for the learned counsel for the appellant Sri Bajrang Singh Thakur and the learned Standing Counsel for the Respondent-Corporation.

(7) The point for consideration in this matter is, whether the order passed by the trial Court is perverse and liable to be set aside?

(8) The learned counsel for the appellant submits that the trial Court has decided two motor accident O.Ps. arising out of the same accident. One motor accident O.P. i.e., O.P.No.1553 of 2000 was filed for claiming compensation on account of the death of a person in the accident and the second motor accident O.P. is the present one i.e., O.P.No.2284 of 2000. The trial Court held that the negligence is proved in O.P.No.1553 of 2000 and in the present O.P. No.2284 of 2000 it is held that the claimant could not prove the negligence and on that ground also has dismissed this O.P. Therefore, the learned counsel for the appellant sought for setting aside the findings of the trial Court.

(9) Learned standing counsel for the Respondent-Corporation submitted that two O.Ps. i.e., O.P.No.1553 of 2000 and the present O.P.No.2284

of 2000 are arising out of the same accident occurred on 14.8.2000. The trial Court held in O.P.No.1553 of 2000 that the negligence is proved and in the present O.P. No.2284 of 2000, the negligence is not proved. It is further submitted that in the present case the petitioner has failed to furnish the copies of the charge-sheet and other documents and therefore, the trial Court has held that the negligence is not proved.

(10) As far as the findings of the trial Court with regard to the negligence is concerned, in one case the trial Court held that the negligence is proved and in another case negligence is not proved. The trial Court has given a reason that the petitioner did not file all the documents and therefore, the negligence is not proved in this case. It is pertinent to note that when the trial Court held once in one O.P. that negligence is proved, it is binding on the other O.P. also. Because, both the O.Ps. are arising out of the same accident. Perhaps, due to the reasons not known, the petitioner could not have filed those documents in the present O.P. Since the trial Court came to conclusion basing on the material available on record in the other O.P. and held that negligence is proved, the same result should follow in this case also. Therefore, it has to be held that the negligence is proved in this O.P. basing on the findings in the O.P.No.1553 of 2000.

(11) The learned counsel for the appellant submits that the trial Court has refused to award any compensation towards the damages of the auto. The claimant has made a claim of Rs.84,273/- and filed a surveyor report Ex.A2. The trial Court refused to accept this document on the ground that the surveyor has not been examined to prove that document. There is some force in the observations made by the trial Court. However, in view of the submissions made by the learned counsel for the Respondent-Corporation that the surveyor report is filed, but since surveyor is not examined to prove with regard to the damages to the auto, the award passed by the trial Court dismissing the claim does not

require any interference, it is pertinent to note that the accident is proved. The negligence is also proved. The appellant could not examine the surveyor who conducted survey and found damages to the auto. However, the surveyor's report is before the Court. No efforts are made by the respondent to disprove the survey report as false document or fabricated for the purpose of this case. However, it can be presumed that there must be some damage to the auto, since the accident is proved. Keeping in view the fact that in O.P.No.1553 of 2000 compensation was awarded in case of a death and since the accident is also proved, there must be some damage caused to the auto. Considering the facts and circumstances of this case, an amount of Rs.40,000/- is awarded towards damages of the auto.

(12) In the result, the appeal is partly allowed granting compensation of Rs.40,000/- with costs and subsequent interest at 7.5% per annum from the date of the petition till the date of realization. The Respondent-Corporation is directed to deposit the amount within two months from the date of this order. No order as to costs.

(13) Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

02nd March, 2017
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GUDI SEVA SHYAM PRASAD, J.