

THE HON' BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1209 OF 2007

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-petitioner in O.P. No.297 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge (FTC), Mahaboobnagar (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.35,000/- with interest at 9%per annum from the date of petition till realization with proportionate costs, vide order, dated 15.09.2006, as against the claim of Rs.1,50,000/-, for the injuries sustained by the appellant, in a road accident occurred on 05.03.2001.

2. The case of the appellant is that on 05.03.2001 at about 8.00 p.m., he started on his scooter in order to go to Jedcherla from his village. At about 8.20 p.m., while he was going on N.H. No.7, near K.M. stone 84/ 1 in the limits of Jedcherla, he dashed to a tipper bearing No.AP 11 T / 7057, which was parked on the left side of the road without parking lights, due to which the appellant fell down and sustained grievous injuries all over the body. Immediately, he was shifted to the Government Head Quarters Hospital, Mahabubnagar for treatment. On receipt of the complaint, the police Jedcherla registered a case in Crime No.56/ 2001, under Section 338 IPC against the driver of the tipper and took up investigation. The appellant was aged 28 years at the time of accident and he was earning Rs.5,000/- per month by doing agriculture and milk business. Due to the accident, the appellant had sustained fracture of left parietal region, with bleeding from the left ear, injuries on the left hand and multiple injuries all over the body. Immediately after accident, the appellant was shifted to the Government Head Quarters Hospital, Mahabubnagar and thereafter, he was referred to Yashoda Hospital, Hyderabad for expert treatment and operation was performed due to the head

injury and was treated as inpatient for seven days in the said Hospital and spent a sum of Rs.75,000/- towards treatment. Due to the head injury he is getting headache frequently and still continuing treatment as out patient. Due the head injury the petitioner has sustained permanent disability and lost earnings. Therefore, the petitioner is claiming a sum of Rs.1,50,000/- as compensation from the respondents 1 and 2, as they are owner and Insurer of the tipper.

3. The 1st respondent remained *ex-parte*. The 2nd respondent filed counter before the Tribunal, denying all the material allegations mentioned in the petition and contended that the vehicle was not insured with it at the time of accident and that the driver of the said vehicle was not having valid driving licence and that the 2nd respondent is not liable to pay any compensation to the petitioner and finally, prayed to dismiss the claim petition.

4. The Tribunal, after framing three issues and considering the evidence of P.W.1 and Exs.A.1 to A.9 on behalf of the appellant, awarded compensation of Rs.35,000/- with interest at 9% per annum from the date of petition till realization with proportionate costs in favour of the appellant-petitioner against respondents 1 and 2. Challenging the said award, the appellant-petitioner preferred the present appeal seeking enhancement of compensation.

5. Heard learned counsel for the appellant-petitioner and perused the material available on record. Though notice served on the 2nd respondent none appeared till date. The case against the 1st respondent was dismissed for default, vide order, dated 08.07.2016.

6. Learned counsel appearing on behalf of the appellant contended that there is no negligence on the part of the appellant while driving the scooter; that the Tipper bearing No.AP 11 T/ 7057 was wrongly parked on the middle of the road on the night of 05.03.2001; that there are no parking lights; there was

no indication from the side of the driver of the Tipper to the passengers-by, and that the accident occurred due to exclusive fault and negligence on the part of the driver of the tipper bearing No.AP11T/ 7057.

7. The Tribunal assessed compensation of Rs.70,000/- on different counts as stated below:

For pain and Suffering Rs.15,000/-

For Medical expenses Rs.46,000/-

For extra nourishment,
Transport and attendant
charges Rs.5,000/-

Loss of earning Rs.4,000/-.

8. To substantiate his contention, the appellant deposed as PW.1 and got marked Exs.A1 to A9. Ex.A1 is the certified copy of FIR, Ex.A2 is the certified copy of medical record, Ex.A5 is the copy of driving licence of the appellant, Ex.A6 is the medical bills for Rs.45,878/-, Ex.A7 is the attested copy of charge sheet, Ex.A8 is the disability certificate and Ex.A9 is the referral card issued by the Government Hospital, Mahabubnagar. The Tribunal has allowed the medical bills in toto. Further, the Tribunal has granted Rs.15,000/- for pain and suffering and on other counts also the Tribunal has assessed just and reasonable compensation basing on the evidence on record. In the circumstances of the case, no variation is warranted and the same is liable to be confirmed.

9. There is specific evidence of PW.1 with regard to latches and default committed by the driver of the tipper. The respondents before the trial Court had contended that the appellant is also responsible for the occurrence of the accident. The respondents did not examine a single witness to substantiate the same. Had the driver was not parked the Tipper in the middle of the road as

contended by the appellant, the accident would not have occurred, or had the driver of the Tipper took any caution the accident in question could have been averted. The Tribunal has apportioned the compensation equally between the driver of the Tipper and the driver of the Scooter (appellant) and made respondents 1 and 2 jointly and liable to pay 50% of the compensation assessed in the case i.e. Rs.35,000/- . Had the appellant was vigilant he would have avoided the accident. In the circumstances of the case, it cannot be determined that the appellant is not equally responsible for the occurrences of the accident. This finding is based on evidence on record. All the contentions raised on behalf of the appellant had failed. The appeal is devoid of merits and therefore, the same is liable to be dismissed.

10. Accordingly, the appeal is dismissed. Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

July 26, 2017
KTL

Dr. SHAMEEM AKTHER, J

