

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A. C.M.A. No.768 of 2010

ORDER :

This appeal is arising out of the order dated 02-12-2009 passed in O.P.No.824 of 2007, by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge at Khammam.

(2) The appellant is the claimant, who filed O.P.No.824 of 2007 for compensation of Rs.3,00,000/- for the injuries sustained by him in the motor vehicle accident. On considering the evidence, the Tribunal has dismissed the O.P. No.824/2007. Being aggrieved by the impugned award, the appellant is before this Court for setting aside the order passed by the Tribunal and also for grant of compensation.

(3) Heard Sri Y. Pulla Rao, the learned counsel for the appellant and Ms. K.Mahalakshmi, the learned counsel representing Sri B. Narayana Reddy, counsel for respondent.

(4) Learned counsel for the appellant submits that the Tribunal dismissed the Original Petition No.824/207 without considering the evidence on record properly. Though there is no negligence on the part of the driver of the DCM van, the Tribunal held the driver of DCM van liable. He contended that the accident occurred due to rash and the negligence on the part of the rider of the bullock cart. The driver of the DCM van is holding valid driving licence, which is Ex.A10. There is no violation of terms of policy. The DCM van been insured with respondent No.2 under Ex.B1

insurance policy, which is a comprehensive policy. The policy covers the risk of two employees working on the van. It is contended that the driver of the van is an employee working on the van. Therefore, the risk of the driver of van is covered. On these grounds, the orders of the Tribunal dismissing the original petition are liable to be set aside.

(5) *Inter alia*, the contention of learned counsel for the respondent is that the Tribunal has rightly dismissed the appeal holding that the accident occurred due to the rash and negligent driving of driver of DCM van, that there is no coverage of insurance for the risk of the driver of DCM Van, as he is not a third party.

(6) The point for consideration in this matter is whether the accident occurred due to the rash and negligent driving of the driver of DCM van or is it due to the negligence on the part of the raider of bullock cart.

(7) This is an appeal by insurer. The liability and quantum of compensation are under challenge. This is a case of collision of a DCM van and a bullock cart. On the complaint of the bullock cart rider, Police registered a case, against the driver of the DCM van. Police filed charge-sheet against the appellant. On consideration of documents Exs.A1 and A2, the First Information Report and Charge-sheet, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of DCM van.

(8) In fact, this is a case of collision between the DCM van and bullock cart. There is no possibility for the Tribunal to come to a conclusion that the accident occurred only due to the driving of the driver of DCM van.

Merely because the Police registered complaint against the driver of DCM van, it does not lead to an inference that there is negligence on the part of driver of the DCM van.

(9) It is pertinent to note that the driver of DCM van is having valid driving licence. Ex.A10 is the driving licence extract. It was valid by the date of accident. Ex.B1 is a comprehensive insurance policy. As per the said policy extract, premium of Rs.50/- paid to cover the two employees working on the van. Therefore, there is coverage of insurance of the driver of the van. The Tribunal, without considering all these aspects, has dismissed the O.P.

(10) In view of the foregoing reasons, the order passed by the Tribunal is set aside. The matter is remitted back to the Tribunal for assessment of the compensation basing on the evidence on record; and hearing the arguments of both sides and dispose of the case within two months from the date of receipt of this order.

(11) M.A.C.M.A. is accordingly disposed of. No order as to costs.

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

JUSTICE G.SHYAM PRASAD

07th February, 2017

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