

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.2145 of 2005

JUDGMENT:

Heard Sri V.Atchuta Ram, learned counsel for the appellant, and Sri Somanchi Venkateswarlu, learned Standing Counsel for the second respondent-insurance company, apart from perusing the material available before this Court.

This appeal, filed by the claimant in O.P.No.972 of 2001 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad, under Section 173 of the Motor Vehicles Act, 1988 (for brevity, 'the Act'), challenges the order, dated 11.02.2005, whereunder and whereby the Tribunal dismissed the claim of the appellant herein.

Appellant herein filed O.P.No.972 of 2001, claiming compensation of Rs.1,50,000/-. According to the claimant-appellant, he sustained injuries due to the rash and negligent driving of the driver of the auto-trolley bearing No.AP 13U 7205. The driver of the offending vehicle remained *ex parte*. The second respondent-insurance company contested the matter by filing counter. On the basis of the pleadings available, the Tribunal framed the following issues for consideration:

1. Whether the petitioner sustained injuries due to the rash and negligent driving of the offending vehicle by its driver?
2. Whether the petitioner is entitled for compensation, if so, to what amount and from whom?

To substantiate their case, claimant-appellant herein examined himself as P.W.1 and marked Exs.A1 to A9. On behalf of

the respondents no oral evidence was adduced but Ex.B1-certified copy of insurance policy was marked.

The learned Presiding Officer, while dealing with issue No.1, held that, if really the auto bearing No.AP 13U 7205 was involved in the accident, the police would have filed charge sheet against the driver of the said vehicle. The Tribunal further held that, non-filing of the charge sheet by the police against the driver of the offending vehicle would throw a doubt about the involvement of the said vehicle in the accident. In fact, a copy of the charge sheet is filed before this Court, as additional evidence, which is taken on record. The said charge sheet, filed by the police, refers to the offending vehicle as the vehicle bearing No.AP 13 U 7205. A perusal of the order passed by the Tribunal discloses that, though the Tribunal fixed the amounts payable under the heads of 'pain and suffering' and 'extra nourishment and medicines', the Tribunal refused to grant the same on the ground that the claimant failed to establish the involvement of the vehicle bearing No.AP 13 U 7205. Taking into consideration the charge sheet, now filed before this Court, as additional evidence, this Court deems it appropriate to grant the amounts as indicated by the Tribunal towards 'pain and suffering' and 'extra nourishment and medicines'.

Accordingly, the appeal is allowed in part, directing the respondent to pay a sum of Rs.10,000/- towards pain and suffering and Rs.18,135/- towards extra nourishment and medicines, totalling a sum of Rs.28,135/- with interest @ 7.5% p.a. from the date of the petition till the date of payment.

As a sequel thereto, miscellaneous Petitions pending, if any, in this appeal, shall stand closed. There shall be no order as to costs.

05th December, 2017
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A.V.SESHA SAI,J

