

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.1888 of 2005

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant-petitioner, challenging the judgment and decree dated 29.09.2004 in M.O.P.No.299 of 1998 passed by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Visakhapatnam (for brevity "the Tribunal"), dismissing the petition filed by him claiming compensation of Rs.1,00,000/-.

2. The brief facts of the case are that, on 01.06.1997 while the appellant was travelling in a Maruti Van bearing No.AP 35A 2886 from Vizianagaram to Visakhapatnam, the accident occurred when the driver of the Maruti Van tried to avoid collision with a buffalo, which suddenly came on to the road. As the accident occurred due to the rash and negligent driving by the driver of the Maruti Van, the appellant had sustained grievous injuries on fore head, besides other bleeding injuries. He was shifted to N.R.I. Hospital, Visakhapatnam. On report, the Station House Officer, Anandapuram Police Station, registered a case in Crime No.81/97 under Section 338 IPC against the 2nd respondent – Driver of the Maruti Van. On account of the injuries sustained by him in the said accident, the appellant filed the

aforesaid M.O.P.No.299 of 1998 claiming compensation of Rs.1,00,000/- against the respondents therein, who are owner, driver and insurer, respectively, of the offending Maruti Van.

3. Before the Tribunal, respondent Nos.1 and 2 remained exparte and respondent No.3 – Insurance Company alone contested the matter by filing counter denying its liability. On consideration of the evidence of witnesses P.Ws.1 and 2 and the documents under Exs.A.1 to A.3 and Ex.B.1, vide judgment and decree dated 29.09.2004, the Tribunal dismissed the petition holding that the appellant cannot claim compensation under Section 163-A of the Act.

4. Heard the arguments of learned counsel for the appellant-petitioner, as well as the learned Standing Counsel for respondent No.3 – New India Assurance Company Limited. Perused the impugned judgment and also evidence on record.

5. Learned counsel for the 3rd respondent – Insurance Company submitted that under Section 163-A of the Act, compensation can be awarded for the injuries sustained in a motor vehicle accident by following II-Schedule of the Act.

6. Learned counsel for the appellant submits that the appellant is entitled for compensation of Rs.1,00,000/- as he received a head injury in the accident.

7. On consideration of the arguments of learned counsel for the respective parties, it is pertinent to note that originally the appellant has filed claim petition before the Tribunal under Section 166 of the Act. As regards Issue No.1 with regard to rash and negligent driving by the driver of the crime vehicle, the Tribunal held that the issue was partly allowed in favour of the petitioner and partly against the petitioner. As a matter of fact, the accident occurred in a public place when a buffalo came on to the road while the crime vehicle was proceeding on the road and dashed against the buffalo. The Tribunal was under the impression that there was some negligence on the part of the crime vehicle and, therefore, held the issue accordingly. However, the Tribunal has dismissed the claim petition holding that under Section 163-A of the Act, the compensation can be awarded only in cases of death and permanent disability. Perhaps, the Tribunal might have been under the impression that the compensation cannot be awarded under Section 163-A of the Act for the injuries received in the accident. The Tribunal was under the impression that compensation under Section 163-A of the Act could be claimed only in case of death or permanent disability and not for injuries.

8. Learned Standing Counsel for the 3rd respondent – Insurance Company submitted that in view of the provision contained in Section 163-A of II-Schedule of the Act,

compensation can be awarded even for the injuries sustained in the accident.

9. In the instant case, the appellant had suffered a head injury, which is grievous in nature and, therefore, as per II-Schedule of the Act, the appellant is entitled for a sum of Rs.5,000/- towards pain and suffering; Rs.5,000/- towards one grievous injury; and Rs.15,000/- towards medical expenses. Thus, the appellant is entitled for a total compensation of Rs.20,000/- towards head injury suffered by him.

10. In the result, the Civil Miscellaneous Appeal is allowed in part, by setting aside the judgment dated 29.09.2004 dismissing M.O.P.No.299 of 1998, and awarding compensation of Rs.20,000/- (Rupees twenty thousand only) with proportionate costs and interest @ 7.5% per annum from the date of petition till realization. No order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

24.10.2017.
Msr

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