

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.517 OF 2011

JUDGMENT:

Appellant-claimant-injured filed this appeal against the order and decree dated 17.08.2010 passed in M.V.O.P.No.349 of 2008 by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II Additional District and Sessions Judge, Guntur, granting compensation of Rs.54,000/- as against the claim of Rs.2,50,000/- for the injuries sustained by him in the accident occurred on 28.10.2007.

The appellant-claimant filed claim petition under Section 163-A of the Motor Vehicles Act alleging that on 28.10.2007 when he was proceeding as a pillion rider on motor cycle along with his brother, the offending auto bearing NoAP7Z 9580 came in their opposite direction and dashed against their motor cycle, due to which, he fell down and sustained injuries. Immediately, after the accident, he was shifted to Dr.Suresh Hospital, Vijayawada. After first aid, he was shifted to Vijetha Hospital where he was treated as in-patient, operated and skin grafting was done. In respect of the said accident, Mangalagiri Town Police registered a case in crime No.234/2007. It was further alleged that due to accident, he became disabled permanently, lost his earnings and earning capacity. Thus, he claimed compensation of Rs.2,50,000/- payable by the owner and insurer of the offending auto i.e. R.1 and R.2 jointly and severally.

Before the Tribunal, the 1st respondent owner of the auto remained *ex parte*.

The 2nd respondent-Insurance Company filed a counter affidavit denying the averments of the claim petition and

specifically contending that the accident was occurred due to collusion between the auto and the motor cycle, as such, the owner and insurer of the motor cycle are also necessary parties to the claim petition. It was further contended that the accident was occurred due to rash and negligent driving of the motor cycle by its driver. Hence, they are not liable to pay compensation.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the accident occurred due to rash and negligent driving of the driver of auto bearing No.AP7Z 9580?
- 2) Whether the petitioner is entitled to compensation, and if so, to what amount?
- 3) To what relief?

On behalf of the appellant-claimant, PWs 1 to 3 were examined and Exs.A.1 to A.82 were got marked besides Ex.X.1. On behalf of the 2nd respondent-Insurance Company, R.W.1 was examined and Exs.B.1 to B.3 were got marked.

The Tribunal based on the evidence of PWs 1 and 2 coupled with documents under Exs.A.1 and A.2 i.e. copy of FIR and Charge Sheet came to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the offending auto. Further, relying on ***New India Assurance Company Limited vs. B.Malati***¹, the Tribunal held that in case of collusion between two vehicles, it was only the owner of the vehicle whose driver was at fault and its insurer are liable, but not the owner of the other vehicle which was not at fault or its insurer. Based on the above, the Tribunal held that the owner and insurer of the motor cycle on which the injured was travelling were not necessary parties.

¹ 2002 (6) ALD 137 (DB)

However, the Tribunal held that the driver of the auto was not having valid driving license to drive the transport vehicle. Further, since the owner of the auto remained *ex parte* before it, the Tribunal drawn adverse inference against him and exonerated the Insurance Company from its liability and held that the 1st respondent alone was liable to pay the compensation.

Based on the evidence available on record, the Tribunal has awarded Rs.10,000/- towards shock, pain and loss of amenities of life, Rs.20,000/- towards for crush injury, Rs.6,000/- towards medical expenses and Rs.18,000/- towards loss of income, in all, the Tribunal has granted Rs.54,000/- along with costs and interest @7.5% per annum from the date of petition till the date of realization.

Sri B.Parameswara Rao, learned counsel for the appellant, would contend that the driver of the offending auto was having valid driving license to drive Light Motor Vehicle and only because the driver did not get endorsement on his driving license, it cannot be said that the driver of the auto drove the auto without having any valid driving license.

Per contra, Sri T.Narsi Reddy, learned Standing Counsel appearing for the respondent-Insurance Company, would contend that as the driver of the offending auto was not having valid driving license, the Insurance Company is not liable to pay the compensation.

In ***Mukund Dewangan vs. Oriental Insurance Company Limited***² the Hon'ble Supreme Court held that holder of LMV driving licence is not required to obtain separate endorsement to

² 2017 ACJ 2011

drive transport vehicle of light motor vehicle class. Hence, the driver of the first respondent, who was the holder of the LMV Transport license, is authorized to drive the offending vehicle i.e. auto. In that view of the matter, fixing liability on respondent No.1 alone absolving respondent No.2-Insurance Company from the liability is illegal and contrary to the judgement of the Hon'ble Supreme Court in ***Mukund Dewangan (2 supra)***. Therefore, both the respondents are jointly and severally liable to pay compensation to the appellant-claimant.

As regards quantum of compensation, in the absence of any contrary evidence let in by the appellant-claimant, the amounts granted by the Tribunal cannot be said to be on lower side. Further, the Tribunal taking note of the fact that the claimant in his evidence as P.W.1 failed to state that due to the injuries sustained by him in the accident, he could not drive bike and even stand for more than an hour. In those circumstances, the Tribunal has rightly rejected the claim of the appellant for compensation towards permanent disability. This Court finds no ground to interfere with the impugned order in that regard.

The appeal is partly allowed to the extent indicated above.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

28.09.2018
sur / Dsh