THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1498 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 18.05.2006 passed in M.V.O.P. No.523 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Kurnool at Nandyal (for short, 'the Tribunal'), whereby the Tribunal while dismissing the claim against the 2nd respondent-insurer, granted Rs.1,46,250/- with interest at 7.5% per annum as compensation in favour of the appellant-claimant, as against the claim of Rs.3,00,000/- for the injuries sustained by him in a motor accident occurred on 29.08.2002 due to the rash and negligent driving of the driver of the lorry bearing registration No.APQ 1915.

2. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the 2nd respondent-insurer, apart from perusing the material on record. The appeal against the 1st respondent-owner of the offending vehicle was dismissed for default vide the order dated 31.03.2017.

3. Learned counsel for the appellant-claimant would contend that the compensation granted by the Tribunal is very meagre; there is amputation of left leg of the appellant; there is no violation of any terms and conditions of the insurance policy of the offending vehicle; the Tribunal without considering the same, erroneously dismissed the claim against the 2nd respondent-insurer holding that the appellant is a gratuitous passenger in the offending lorry; and ultimately, prayed to enhance the compensation and to direct the 2nd respondent-insurer to pay compensation at first instance and recover the same from the 1st respondent-owner of the offending vehicle.

4. On the other hand, the learned Standing Counsel for the 2nd respondent-insurer would contend that the Tribunal had rightly assessed the

compensation and there is violation of policy conditions and the appellant-claimant was a gratuitous passenger travelled in the goods vehicle, so no liability can be tagged to the 2nd respondent-insurer; and ultimately, prayed to dismiss the appeal.

5. There is no dispute with regard to the appellant-claimant suffering injuries in a motor accident occurred on 29.08.2002 due to the rash and negligent driving of the driver of the lorry bearing registration No.APQ 1915.

6. In view of the submissions made by both sides, the following points have come up for determination:

(1) Whether the appellant-claimant is entitled for enhancement of compensation?

(2) Whether the 2nd respondent-insurer be directed to deposit the compensation amount at first instance and recover the same from the 1st respondent-owner of the offending vehicle?

7. POINT No.1: As far as the award of compensation of Rs.1,46,250/- granted by the Tribunal is concerned, the Tribunal had taken the age of the appellant-claimant as 15 years and income as Rs.15,000/- per annum, applied multiplier '15' and granted compensation of Rs.1,12,500/- for 50% permanent disability suffered by the appellant. The Tribunal also granted Rs.3,750/- towards loss of income for three months, Rs.20,000/- towards pain and suffering and Rs.10,000/- towards medical and other expenses. In all, the Tribunal granted Rs.1,46,250/- with interest at 7.5% per annum from the date of petition till date of realisation, which is just and reasonable. There are no grounds to enhance the same.

8. POINT No.2: The offending lorry bearing registration No.APQ 1915 was insured under the original of Ex.B.1-copy of insurance policy. As per the

evidence on record, the driver of the offending lorry was not having valid driving licence. Further, there is no iota of evidence to believe that the appellant-claimant was the cleaner of the offending lorry. The Tribunal assigned number of reasons and held that the appellant was a gratuitous passenger in the offending vehicle.

9. It is apt to refer the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**[1], where the deceased was travelling in a goods vehicle, the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants. In the instant case, as per the evidence on record, the appellant was a gratuitous passenger in the offending lorry bearing registration No.APQ 1915. As the appellant travelled in the offending lorry, which is a goods vehicle, as a gratuitous passenger, the 2nd respondent-insurer cannot be made liable to pay compensation the claimant. The Tribunal rightly dismissed the claim against the 2nd respondent-insurer assigning number of reasons. Under these circumstances, no direction can be given to the 2nd respondent-insurer to satisfy the award at first instance and recover the same from the 1st respondent-owner of the offending lorry. All contentions raised on behalf of the appellant-claimant do fail. The appeal is devoid of merit and it is liable to be dismissed.

10. In the result, this appeal is dismissed confirming the impugned order dated 18.05.2006 passed by the Tribunal in M.V.O.P. No.523 of 2003. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 03.07.2018
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[1] 2003(2) SCC 223