

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A.No.3607 of 2004

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) is filed by the appellant/National Insurance Company Limited, aggrieved by the grant of compensation of Rs.87,000/- as against a claim of Rs.1,00,000/- to the 1st respondent/claimant, by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Karimnagar ('the Tribunal', for brevity), vide judgment, dated 02.04.2004, passed in O.P.No.383 of 2003.

2. Heard the learned Standing Counsel for the appellant-Insurance Company and perused the record. Despite listing this matter under the caption "For Orders", there is no representation for the 1st respondent/claimant. This appeal is of the year 2004. Hence, this appeal can be disposed of on merits without waiting for the learned counsel for the 1st respondent/claimant to advance arguments.

3. The learned Standing Counsel for the appellant-Insurance Company would submit that the 1st respondent/claimant was responsible for the occurrence of the accident. There was no rashness or negligence on the part of the driver of the Maruti Car bearing registration No.AP-11-G-1456 (2nd respondent). The 1st respondent/claimant came from the backside and dashed against the Maruti Car being driven by the 2nd respondent, due to which, he suffered injuries. The Tribunal assessed the compensation

payable to the 1st respondent/claimant at Rs.86,296/- and rounded to Rs.87,000/- with interest at the rate of 9% per annum from the date of petition till the date of deposit and fastened the liability against the owner of the Maruti Car bearing registration No.AP-11-G-1456 (2nd respondent) and the appellant-Insurance Company, which is erroneous and ultimately prayed to set aside the award passed by the Tribunal fastening liability against the appellant-Insurance Company.

4. The 1st respondent herein is the injured claimant. He suffered injuries in a road accident that occurred on 25.01.2002. The Tribunal assessed the compensation payable to the 1st respondent/claimant as Rs.87,000/- with interest at the rate of 9% per annum from the date of petition till the date of deposit, directed the appellant-Insurance Company, the 2nd respondent-driver of the Maruti Car bearing registration No.AP-11-G-1456 and the 3rd respondent-owner of the Maruti Car bearing registration No.AP-11-G-1456, to jointly and severally pay the said amount. There is evidence of P.W.1 with regard to rashness and negligence on the part of the 2nd respondent-driver in driving the Maruti Car bearing registration No.AP-11-G-1456. P.W.2-Dr.V.V.N.Prasad Rao, deposed about the injuries suffered by the 1st respondent/claimant in the subject accident. There is no error in assessing and granting an amount of Rs.87,000/- as compensation to the 1st respondent/claimant by the Tribunal. The only point that falls for determination is whether the Tribunal is justified in fastening the liability against the appellant-Insurance Company, holding that there was rashness

and negligence on the part of the driver of the Maruti Car bearing registration No.AP-11-G-1456, which was insured with the appellant-Insurance Company.

5. The 1st respondent-claimant deposed as P.W.1 in this case. He is an interested witness. No other independent witness was examined on behalf of the 1st respondent-claimant, in order to prove rashness or negligence on the part of the driver of the Maruti Car bearing registration No.AP-11-G-1456. The contents of Ex.B.2- Certified Copy of the Charge-sheet reveal that the subject accident occurred due to rash and negligent driving of the 1st respondent/claimant, who was also charge-sheeted for the offence punishable under Section 338 of I.P.C. The said document cannot be overlooked. Further, no independent witness was examined on behalf of the 1st respondent/claimant to prove the rashness or negligence on the part of the driver of the Maruti Car bearing registration No.AP-11-G-1456. Hence, it can be safely concluded that the 1st respondent/claimant and the 2nd respondent/driver of the Maruti Car bearing registration No.AP-11-G-1456 are equally responsible for the occurrence of the subject accident. Since there was rashness and negligence on the part of the 1st respondent-claimant and the 2nd respondent herein-driver of the Maruti Car bearing registration No.AP-11-G-1456 equally, the appellant-insurer, 2nd respondent-driver and 3rd respondent-owner of the Maruti Car are jointly and severally liable to pay 50% of the compensation amount awarded with interest at 7.5% per annum from the date of petition till date of deposit, to the 1st respondent-claimant.

6. Accordingly, the appeal is allowed in part, modifying the judgment, dated 02.04.2004, passed in O.P.No.383 of 2003 by the Tribunal and the amount of compensation granted by the Tribunal is reduced from Rs.87,000/- to Rs.43,500/- with interest at 7.5% per annum from the date of petition till date of deposit. The other terms of the order under challenge remain unaltered.

Miscellaneous Petitions pending, if any, shall stand closed.

No order as to costs.

28th June, 2018
Bvv

Dr. SHAMEEM AKTHER, J

