

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.NO.2087 OF 2009

JUDGMENT:

This appeal arises out of the award, dated 17.05.2007 in O.P.No.59 of 2006 on the file of the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Madanapalle.

2. The appellant is the claimant. The brief facts of the case are that the appellant filed claim petition under Section 166 (1) of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- with interest at 12% p.a., against the respondents 1 and 2, the owner and insurer of the crime vehicle for the injuries sustained by him in the motor accident that took place on 23.04.2005.

3. The Tribunal on consideration of evidence, has dismissed the claim petition. Aggrieved by the impugned order, this appeal has been preferred by the claimant.

4. Heard the arguments of the learned counsel for the appellant and the respondents.

5. According to respondent No.2-insurer, it is a case of hit and run. The Tribunal considered the evidence on record and came to the conclusion that this is a case of hit and run and dismissed the claim petition without touching the merits of the case.

6. Admittedly, this is a petition filed under Section 166 of the Motor Vehicles Act. The accident occurred on 23.04.2005 while the petitioner was proceeding as a cleaner in a Tempo bearing No.AP-3U-5054. The said vehicle was insured with the 2nd respondent. The Tempo has dashed

against an unknown lorry which was coming in opposite direction driven in a rash and negligent manner. The said contention of the petitioner that it was a case of 'head-on' collision was not accepted by the Tribunal. The Tribunal placed reliance on the evidence of PW.1 wherein he stated that after hitting the Tempo, the offending lorry proceeded further without stopping; and the police personnel have registered a crime against the offending lorry and no case was registered against the driver of the Tempo.

7. The Tribunal, on considering the statement of PW.1, has come to the conclusion that the accident occurred due to the rash and negligent driving of unknown lorry (offending lorry). Consequently, it has held that it is a case of hit and run as the unknown lorry after dashing the Tempo has gone away and the registration number of the lorry was not known to fix the vehicle. There is certain procedure contemplated under Section 163 of the Motor Vehicles Act, to make a claim before the concerned authorities in cases of hit and run.

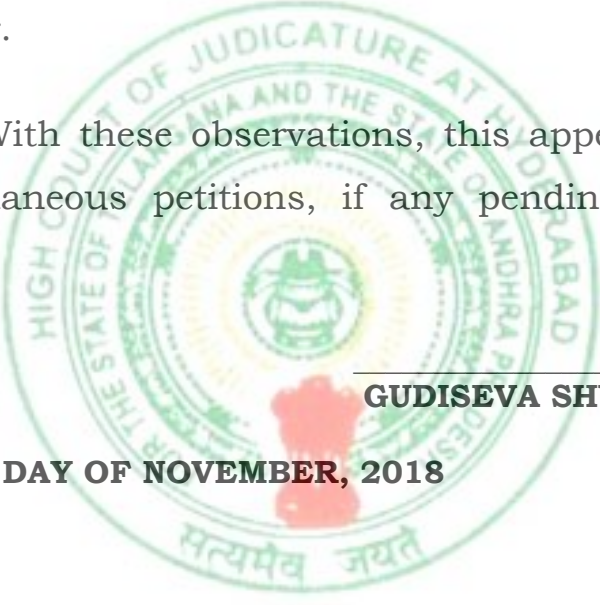
8. In fact, the appellants have challenged the findings on rash and negligence. The submission of learned counsel for appellant is that there is contributory negligence as it is a case of Head-On collision, but the Tribunal wrongly held that the accident has occurred only due to the second offending vehicle.

9. It is a case of Head-On collision. Therefore, there is contributory negligence. In that event, the owner of the auto is also liable. The liability can be apportioned between the two vehicles, i.e., auto at 40% and lorry at 60%. The matter is remanded to the Tribunal for assessing the

compensation in the ratio fixed, by considering the evidence on record, @ 40% liability of the auto driver.

10. In view of the foregoing reasons, this Court is of the considered view that the findings of the Tribunal requires to be modified accordingly. However, the petitioner is at liberty to make his claim before the appropriate Tribunal as per Section 163 of M.V. Act for 60% liability of lorry driver, and the Tribunal shall consider the same as per the provisions of the scheme under Section 163 of Motor Vehicles Act. The Tribunal is directed to dispose of the matter within three months from the date of receipt of a copy of this order.

11. With these observations, this appeal is disposed of. Miscellaneous petitions, if any pending, shall stand closed.



GUDISEVA SHYAM PRASAD, J

DATED: 23rd DAY OF NOVEMBER, 2018
Hsd/KSM