

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A.No.1897 OF 2004

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-Insurance Company aggrieved by the order dated 27.02.2004 in O.P.No.353 of 1999 on the file of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Chittoor (for short, 'the Tribunal').

2. Heard the learned counsel for the appellant-Insurance company and perused the record. Despite the matter being listed today under the caption 'for orders', there is no representation for the 1st respondent-claimant. The appeal against respondent No.2 was dismissed for default *vide* order dated 23.09.2011.

3. Learned counsel appearing for the appellant-Insurance company would contend that the owner-cum-driver of the offending car was not possessing driving licence. He was prosecuted for not possessing driving licence. The Tribunal tagged the liability against the appellant-insurance company along with the owner of the vehicle, which is contrary to law and ultimately prayed to allow the appeal.

4. As per the evidence on record, P.W.1 R.Sunitha suffered grievous injuries due to rash and negligent driving of the driver of the car bearing No.KA 04 N 1627. To substantiate the same, she has filed Ex.A1 certified copy of FIR, Ex.A2 copy of charge sheet, Ex.A3 copy of Motor Vehicles Inspector's report, Ex.A4 out patient card, Ex.A5 discharge summary certificate and Ex.A6 bunch of medical bills. The Tribunal has considered the oral and documentary evidence and assessed the compensation of Rs.45,000/- and awarded the same with interest at 9% per annum from the date of petition till the date of deposit. This finding

is based on the evidence on record. On behalf of the appellant-insurance company, its employee B.Krishnappa was examined as R.W.1. He deposed that the driver of the offending vehicle did not possess the driving licence. As per the charge sheet, the driver-cum-owner of the car bearing No.KA 04 N 1627 was prosecuted for not possessing the driving licence. There is no legally acceptable evidence to believe that the driver of the offending car was possessing driving licence. However, P.W.1-claimant, being third party, is entitled for compensation from the appellant-insurance company. She cannot be deprived of the same. Under these circumstances, the order passed by the Tribunal is modified as mentioned herein.

5. The respondent-claimant is entitled for compensation of Rs.45,000/- with interest at 9% per annum from the date of petition till the date of deposit against the appellant and the respondent-owner cum driver of the car bearing No. No.KA 04 N 1627. At the first instance, the appellant shall deposit the entire compensation in the subject O.P. within two months from the date of this order and recover the same from the respondent-owner cum driver of the vehicle, by name, P.Sundar Raj. On deposit, the claimant is permitted to withdraw the entire amount with interest.

6. Accordingly, the appeal is disposed of. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 13.06.2018
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