

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1205 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the petitioner-claimant aggrieved by the order dated 22.03.2005 in O.P.No.391 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, East Godavari (for short, 'the Tribunal').

2. Heard the learned counsel for the appellant-petitioner and the learned counsel for respondent No.2-Insurance Company.

3. Learned counsel for the appellant/petitioner would contend that the appellant was the driver of the lorry bearing No.AP 13 T 6840 and he suffered with injuries due to rash and negligent driving of the driver of the lorry bearing No.AP 20T 6327. There is no negligence on the part of the appellant. The Tribunal held that the appellant was responsible for the accident and the injuries suffered by him. The Tribunal did not properly appreciate the evidence on record. Though the Tribunal assessed compensation of Rs.73,000/-, the Tribunal did not award the same. It is also contended that the appellant had filed the copy of statement recorded under Section 161 Cr.P.C. in the subject crime in the Registry. There is no ample evidence to prove that the appellant was responsible for the accident and ultimately prayed to grant the compensation of Rs.2,00,000/- as claimed.

4. On the other hand, learned counsel for the Insurance Company would contend that the instant application for claim was filed under Section 166 of the Act. The appellant did not prove the negligence

on the part of the opposite vehicle. The Tribunal rightly concluded that there was negligence on the part of the appellant and declined to grant any compensation. The finding is based on the evidence. There is nothing to take a different view and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the following points arise for determination:-

1. Whether the appellant suffered injuries due to rash and negligent driving of the driver of the opposite lorry bearing No.AP 20T 6327 ?
2. Whether the appellant is entitled for compensation of Rs.2,00,000/- as claimed ?
3. Whether the award passed by the Tribunal is liable to be set aside ?

6. To substantiate the case of the appellant, he was examined as P.W.1 and claimed that he was not negligent in driving the lorry bearing No.AP13T 6840 on 24.02.2001 and caused the accident. As per the evidence on record, there was head on collision between two lorries on 24.02.2001. The appellant (P.W.1) supported his version and contended that there was no negligence on his part. He did not choose to examine any of the witnesses. Ex.A1 is the attested copy of FIR, Ex.A.2 is the altered FIR and Ex.A4 is the copy of charge sheet.

7. Except the self serving evidence of P.W.1, there is no other oral or documentary evidence to hold that the appellant was not negligent in occurrence of accident. No value can be assigned to his statement recorded under Section 161 Cr.P.C. by the police. Moreover it is not an evidence to act on. The finding of the Tribunal with regard to rashness and

negligence on the part of the appellant in causing the accident is based on evidence on record. There cannot be a different opinion.

8. As far as assessment of compensation is concerned, the Tribunal had rightly assessed the compensation of Rs.73,000/- with interest. The claim petition is filed under Section 166 of the Act which relates to fault liability. The appellant has to prove the negligence on the part of the other vehicle. The Tribunal held that the accident was occurred due to the rash and negligent driving of the appellant, wherein he suffered two grievous injuries and three simple injuries. Hence, he is not entitled for compensation against his owner and insurer under Section 166 of the Act.

9. Under Workmen's Compensation Act, there are different applications. Since this application is filed under Section 166 of the Act and as the case of the appellant relates to fault liability, he is not entitled for any compensation. The finding of the Tribunal is based on the evidence on record.

10. In the result, the appeal is dismissed. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

Date: 05.06.2018
ssp

Dr. SHAMEEM AKTHER, J