

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.859 of 2005

JUDGMENT:-

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity), is filed by the appellant-claimant, challenging the order, dated 25.10.2004, passed in O.P.No.495 of 2001 by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge (FTC), Nizamabad ('the Tribunal', for brevity), whereby, his claim petition claiming a compensation of Rs.1,00,000/- for the damages caused to his jeep bearing registration No.AP-25-T-5661 in the subject accident, was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. The learned counsel for the appellant-claimant would contend that the subject accident occurred due to the rash and negligent driving of the driver of the lorry bearing registration No.AP-25-T-4317. The Tribunal erroneously dismissed the claim petition holding that the appellant-claimant has suppressed the material facts, i.e., particulars of the policy of insurance of the jeep and ultimately prayed to allow the appeal as prayed for.

4. On the other hand, the learned Standing Counsel for the 1st respondent-Insurance Company would contend that the appellant-claimant, in his evidence, categorically admitted that his jeep was having an insurance policy and when the Tribunal

asked him to file a copy of the said policy, he got filed a memo before the Tribunal through his counsel stating that his jeep was not insured. Hence, the Tribunal has rightly drawn adverse inference against the appellant-claimant and dismissed the claim petition. There are no circumstances to interfere with the impugned order and ultimately prayed to dismiss the appeal by confirming the Order under challenge.

5. The Tribunal, while dealing with the subject matter, rightly held that the damages to the jeep bearing registration No.AP-25-T-5661 were caused due to the rash and negligent driving of the driver of the lorry bearing registration No.AP-25-T-4317. So, the only dispute is whether the appellant-claimant is entitled for compensation for the damages caused to his jeep bearing registration No.AP-25-T-5661 in the subject accident.

6. To demonstrate the damages caused to his jeep bearing registration No.AP-25-T-5661, the appellant-claimant got marked Exs.A.7 to A.16-bills, as detailed below.

SL.NO.	EXHIBIT NUMBER	DATE	AMOUNT
1.	ExA.7	02.04.1999	Rs.13,700/-
2.	ExA.8	04.04.1999	Rs.14,055/-
3.	ExA.9	04.04.1999	Rs.9,155/-
4.	ExA.10	15.04.1999	Rs.1,200/-
5	ExA.11	05.04.1999	Rs.850/-
6	ExA.12	02.04.1999	Rs.3,800/-
7	ExA.13	15.04.1999	Rs.6,300/-
8	ExA.14	14.04.1999	Rs.2,400/-
9	ExA.15	02.04.1999	Rs.600/-
10	ExA.16	02.04.1999	Rs.1,000/-
TOTAL			Rs.53,020/-

7. The aforementioned exhibits reveal that damages to a tune of Rs.53,020/- were caused to the jeep bearing registration

No.AP-25-T-5661 belonging to the appellant-claimant. There is no dispute with regard to the policy of insurance of the offending lorry bearing registration No.AP-25-T-4317. Further, it is a comprehensive policy. It is pertinent to state that the appellant-claimant deposed as P.W.1 before the Tribunal. In his evidence, he categorically stated that there is a policy of insurance in respect of his jeep bearing registration No.AP-25-T-5661. When the Tribunal asked to produce a copy of the same so as to know the nature of policy, the appellant-claimant got filed a memo before the Tribunal through his counsel stating that his jeep bearing registration No.AP-25-T-5661 was not insured with any insurance company. In view of the same, the Tribunal held that an adverse inference can be drawn against the appellant-claimant since he suppressed the material document with a fear that the real facts would come out and ultimately dismissed the claim petition.

8. In view of the findings of the Tribunal, it is apt to mention that sometimes, it is possible for a witness to state inconsistent versions. It is quite possible that without there being a policy of insurance to his jeep bearing registration No.AP-25-T-5661, the appellant-claimant could have stated in his examination-in-chief that his jeep has a policy of insurance. When the Court asked him to produce a copy of the policy of insurance of the jeep, he got filed a memo through his counsel as indicated above. In the circumstances of the case, it cannot be held that the appellant-claimant claimed damages from any insurance company. It is also pertinent to state that the appellant-claimant had filed the

originals of Exs.A.7 to A.16-bills and other documents to prove the damages caused to his jeep bearing registration No.AP-25-T-5661. Further, the appellant had also filed photographs and the original Surveyor report, which are marked as Exs.A.17 to A.29, to prove the damage caused to his jeep bearing registration No.AP-25-T-5661. The aforementioned documents establishes the damage caused to the jeep bearing registration No.AP-25-T-5661 belonging to the appellant-claimant. There is also evidence of P.W.2 with regard to the damage cause to the jeep bearing registration No.AP-25-T-5661 belonging to the appellant-claimant. However, the person who issued the bills was not examined. Considering the totality of the circumstances, the appellant-claimant can be granted an amount of Rs.25,000/- towards the damages caused to his jeep bearing registration No.AP-25-T-5661. The respondents 1 and 2/insurer and the owner of the offending lorry bearing registration No.AP-25-T-4317 are jointly and severally liable to pay the said compensation with interest @ 7.5% per annum from the date of petition till realisation.

9. Accordingly, this appeal is allowed in part, modifying the order, dated 25.10.2004, passed in O.P.No.495 of 2001 by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge (FTC), Nizamabad, granting a compensation of Rs.25,000/- (Rupees twenty five thousand only) to the appellant-claimant with interest at the rate of 7.5% per annum on the amount of compensation from the date of petition till realisation. On deposit of the compensation, the appellant-

claimant is permitted to withdraw the entire amount along with the interest accrued thereon.

Miscellaneous petitions pending, if any, stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

26th July, 2018
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