

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3392 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the National Insurance Company Limited challenging the order, dated 13.07.2005, passed in O.P.No.356 of 2003 by the learned Chairman, Motor Accident Claims Tribunal – cum – V Additional District Judge (Fast Track Court), Anantapur (for short, “the Tribunal”).

2. Heard the submissions of the learned Standing Counsel appearing for the National Insurance Company Limited representing the appellant. Though the matter is posted under the caption “For Orders”, there is no representation for respondent No.1/claimant. It appears that respondent No.1/claimant has no interest to pursue the matter. However, the matter can be disposed of basing on the material available on record. Perused the material on record.

3. Learned Standing Counsel appearing for the appellant/the National Insurance Company Limited would contend that there is no clear finding by the Tribunal as to which Hero Honda Motor Cycle caused the subject accident on 02.09.2002 and caused injuries; that issue No.1 was not properly framed and answered by the Tribunal; that the Tribunal erroneously assessed the compensation payable at Rs.58,000/- with proportionate costs and interest at the rate of 9% per annum from the date of petition till the date of realisation, as against a claim of Rs.1,00,000/-, and awarded the same against the appellant/Insurance Company,

which is excessive and ultimately, prayed to set aside the impugned award.

4. In view of the submissions made by the learned Standing Counsel for the appellant, the following points come up for determination:

“1. Whether the Tribunal gave a clear finding with regard to the involvement of Hero Honda Motor Cycle bearing No.AP-02-E-3327 or AP-02-J-5472 in the subject accident? and

2. Whether the Tribunal is justified in assessing the compensation and awarding the same against the appellant/Insurance Company and respondent No.2 herein jointly and severally?”

5. **POINT Nos.1 & 2:-**

While dealing with the subject matter, the Tribunal framed the issues as follows:

“1. Whether the accident occurred on 2-9-2002 due to rash and negligent driving of Hero Honda motor cycle bearing No. AP-02-E-3327 by its rider, dashed against the petitioner and caused injuries to the petitioner?

2. Whether the petitioner is entitled to compensation? If so to what amount and from which respondent?

3. To what relief?”

While discussing the evidence and documents on record, the Tribunal did not record a clear finding. It simply stated that this issue is answered in favour of the petitioner. There is no clear finding as to which motor cycle caused the subject accident and the injuries due to rash and negligent act.

6. Learned counsel for the appellant has vehemently contended that there is one vehicle number in the F.I.R. and another vehicle number in the charge sheet so also in the claim petition. The claimant has amended the claim petition and brought a different vehicle number on record. It is also contended that the driver has no driving license. These aspects have to be dealt with by the Tribunal and a clear finding has to be recorded. As far as tagging the liability against the appellant/Insurance Company is concerned, the same is also erroneous without there being a clear finding with regard to issue No.1. Under these circumstances, the impugned order, dated 13.07.2005, passed in O.P.No.356 of 2003 by the Tribunal is set aside.

7. Accordingly, the appeal is allowed and the matter is remanded to the Tribunal. The Tribunal shall examine the contentions of both the parties afresh after affording opportunity to both parties and dispose of the matter in accordance with law, as expeditiously as possible, within a period of three (3) months from the date of receipt of a copy of this judgment. There shall be no order as to costs.

8. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 18.09.2018
AMD

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