

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3638 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-claimant aggrieved by the order dated 04.01.2005 in M.V.O.P.No.452 of 2001 on the file of the Motor Accident Claims Tribunal-cum-VII Additional District Judge, East Godavari District at Kakinada (for short 'the Tribunal').

2. Heard the learned counsel for appellant-claimant, the learned Standing Counsel for 3rd respondent-Insurance Company and perused the record. There is no representation for respondent Nos.1 and 2.

3. Learned counsel for the appellant-claimant would contend that there is negligence on the part of the driver of auto bearing registration No.AP5X 6297 against whom the claim petition was filed. Though there is evidence to establish that due to the rash and negligent driving of the driver of auto, the Tribunal erroneously held that the accident occurred due to the rash and negligent driving of the rider of the motor cycle. There was no negligence on the part of the rider of the motor cycle. The Tribunal erroneously dismissed the claim petition. To establish his case, the appellant examined P.W.2-doctor and got marked the wound certificate and ultimately, prayed to grant the compensation as prayed for by setting the impugned order.

4. On the other hand, the learned Standing Counsel for respondent-Insurance Company would contend that there is specific evidence of the appellant-claimant as P.W.1 that the accident occurred due to the rash and negligent driving of the rider of the motor cycle.

The entire criminal case record is against the motor cyclist. The Tribunal had rightly held that no liability can be fastened against the respondents, who are driver, owner and insurer of auto bearing No.AP 5X 6297. The Tribunal justified in dismissing the claim petition. There are no circumstances to interfere with the same and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are as follows:-

1. Whether the appellant-claimant suffered injuries due to the rash and negligent driving of the driver of auto bearing No.AP 5X 6297?
2. Whether the appellant-claimant is entitled for compensation as claimed against the respondents, who are driver, owner and insurer of auto bearing No.AP 5X 6297?

6. POINT No.1:- To substantiate the claim, the appellant-claimant examined himself as P.W.1 and the doctor as P.W.2 and got marked Exs.A1 to A5 and Ex.X1. On behalf of the respondents, none were examined. The appellant pleaded rashness and negligence on the part of the driver of auto bearing No.AP 5X 6297. He deposed that he boarded the offending auto at Dummulapeta and the Hero Honda Motor cycle driven by respondent No.1 came in high speed and dashed the auto. He suffered four injuries. In fact as per the record, respondent No.1 is the driver of auto bearing No.AP 5X 6297. The appellant was travelling in the said auto. Then there was no question of respondent No.1 driving the motorcycle and dashing the auto. It appears that there is a mistake in recording the deposition. The entire criminal case record is against the rider of the motorcycle. Had the driver of the auto was vigilant and careful in driving the auto, he could

have averted the head-on-collision between his auto and the motorcycle. The collision between two vehicles establishes the rashness and negligence on the part of the driver of the auto also. The appellant suffered with four injuries, one is grievous and other three injuries are simple. Having considered these facts, it can be held that both the drivers are responsible for the occurrence of accident. Point No.1 is answered accordingly.

7. POINT No.2:- As per the evidence of P.W.2-doctor, the appellant suffered the following injuries:

1. Laceration over right knee joint.
2. Abrasion over left knee joint.
3. Laceration over left calf.
4. Fracture of right fumer.

P.W.2 deposed that injury No.4 is grievous. The appellant underwent operation and a steel rod was inserted, and he was discharged on 21.04.2000 with an advice to take bed rest for three months.

8. As the accident occurred in the year 2000, the earning capabilities of the appellant in those days are required to be taken into consideration while assessing and awarding the compensation in favour of the appellant. As injury No.4 is grievous and other injuries are simple, the appellant is entitled for Rs.30,000/- for the injuries, pain and suffering. He is also entitled for Rs.5,000/- towards extra nourishment, Rs.10,000/- towards loss of earnings for a period of four months @ Rs.2,500/- per month. Further, he is entitled for a sum of Rs.5,000/- towards transportation, etc. In all, the appellant is entitled for a sum of Rs.50,000/-. Out of the said amount, 50% of the amount

is deducted towards negligence of the claimant. There is valid policy of insurance covering the inmates of the auto.

9. The appeal is allowed in part with costs setting aside the impugned order passed by the Tribunal and the appellant is entitled for a sum of Rs.25,000/- with interest @ 7.5% per annum from the date of appeal till the date of realisation against respondent Nos.1 to 3 and on deposit, the appellant is permitted to withdraw the said amount along with the interest accrued thereon.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date: 19.09.2018
ssp

Dr. SHAMEEM AKTHER, J

