HON'BLE SRI JUSTICE M.GANGA RAO

MACMA No.433 of 2011

JUDGMENT:

The appellant/claimant filed this appeal against the order and decree dated 10.12.2010 in MVOP No.21 of 2006 passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge(FTC), Adilabad, wherein the Tribunal granted Rs.50,000/- towards compensation against the claim of Rs.1,00,000/- for the injuries sustained by him in the motor accident occurred on 05.10.2005.

2. The appellant filed claim petition alleging that on 05.10.2005 at 4 p.m. he along with other persons while pulling 11 KV electric line in their fields, situated near Chityal crusher on Bhainsa-Nirmal road, an auto bearing No.AP01 T 6954 coming from Nirmal, driven by its driver in a rash and negligent manner at high speed, dashed the appellant and others, as a result, the appellant sustained injuries i.e. 1) grievous fracture of clavicle bone, 2) contusion of left shoulder, 3) abrasion of left forearm, 4) abrasion of left knee and 5) bleeding injuries over other parts of his body. He was shifted to Government Hospital, Nirmal and after first aid, he was referred to Orthopaedician; that later he was admitted in Priya Nursing Home, Nirmal, where one Dr.K.Nageshwar Rao treated him as in-patient and discharged on 08.10.2005 with an advise to follow up treatment; that the Police, Nirmal Rural, registered

a case in Crime No.68 of 2005 under Section 337 IPC and after investigation police filed charge sheet against the driver of Auto, for the offences punishable under Section 337 and 338 IPC; that the appellant was hale and healthy at the time of accident and was aged 22 years and earning Rs.4000/- p.m by way of agriculture and the accident effected his future earnings; that since the accident occurred due to the rash and negligent driving of the auto belonging to respondent No.1 and respondents 2 and 3 being the insurers are liable to pay compensation.

3. The 1st respondent was set ex parte and respondents 2 and 3 filed a common counter denying the averments of the claim petition and specifically stated that the accident occurred due to the negligence of the appellant, as he had not taken any precaution while pulling 11 KV electric wire.

4. Based on the above pleadings, the Tribunal framed the following issues for its consideration:

1. Whether the accident Dt:05.10.05 was due to the rash and negligent driving of the motor vehicle bearing No.AP-01T-6954 belonging to Respondent?
2. Whether the petitioner is entitled to pay any compensation if so, to what extent and against which of the respondents?
3. To What relief?

5. On behalf of the appellant, he himself was examined as PW.1 and marked Exs.A1 to A7. On behalf of respondents 2 and 3, the administrative officer of Road Transport Authority, Adilabad, was examined as RW.1 and marked Ex.B1-extract of driving license of driver of the auto.

6. The Tribunal, after considering the evidence of PW.1 coupled with Exs.A1 to A3 came to the conclusion that the accident was occurred due to the rash and negligent driving of the motor vehicle bearing No.AP 01T 6954 belonging to the 1st respondent, answered the issues in favour of the appellant and the same could not be found fault in the absence of any contrary evidence.

7. The Tribunal considered the evidence of PW.1 and Ex.A3-injury certificate. On perusal of Ex.A3, the appellant received one grievous injury and three simple injuries and Ex.A7-X-ray bill for an amount of Rs.100/-. After considering the evidence on record, the Tribunal granted Rs.10,000/- for one grievous injury, Rs.6,000/- for three simple injuries @ Rs.2,000/- for each injury, Rs.10,000/- towards pain and suffering and also Rs.24,000/- towards damages, in total, Rs.50,000/- as compensation for the injuries received by the appellant in the accident along with costs and interest at 8%p.a.

8. The learned counsel for the appellant contended that the Tribunal has not granted compensation under the head of loss of future earnings and loss of earnings in not working due to the injuries sustained in the accident by the appellant and not granted future medical expenses and attendant charges and he seeks enhancement of compensation, under various heads as claimed in the claim petition.

9. Per contra, the learned counsel for respondents 2 and 3 herein contended that the Tribunal has granted fair and just compensation of Rs.50,000/- along with costs and interest at 8% p.a. for the injuries sustained by the appellant in the accident; that the contention of the learned counsel for the appellant that no compensation was granted towards loss of earnings, future earnings, medical expenses and attendant charges by the Tribunal is illegal and in the absence of any documentary evidence, the said pleas are unsustainable; that the Tribunal rightly held that the driver of the offending vehicle has no valid driving license and holds only non-transport driving licence and violated the conditions of insurance policy and taking into consideration of the same, the Tribunal rightly exonerated respondents 2 and 3 from payment of compensation and fixing the liability on the 1st respondent-owner of the vehicle.

10. The learned counsel for the appellant further contended that it is fault of the driver of the offending vehicle in driving the vehicle without valid licence. However, contended that a person possessing driving licence to drive a light motor vehicle, can drive transport vehicle or light motor vehicle and no separate endorsement is necessary to drive transport vehicle. In support of the said contention, he relied on the Judgment of the Supreme Court in Sant Lal v. Rajesh and others[1] rendered

[1] 2018 ACJ 976

following the decision in Mukund Dewangan Vs Oriental Insurance Company., Ltd.[2] wherein it was held that driver having licence to drive light motor vehicle can drive such a transport vehicle of LMV class and there is no necessity to obtain separate endorsement, since tractor attached with the trolley was transport vehicle of the category of light motor vehicle. Hence, there was no breach of the conditions of the policy.

11. In the facts and circumstances, considering the evidence available on record, this Court finds that the Tribunal has granted fair and just compensation of Rs.50,000/- with costs and interest at 8%p.a. The same could not be found arbitrary and illegal, when the appellant failed to produce the medical bills and supporting evidence. However, the Tribunal gravely erred in fixing the liability on the 1st respondent, owner of offending vehicle holding that the driver of the auto was holding a licence to drive non-transport vehicle and he had driven a transport vehicle at the time of accident, without valid licence, amounts to contravention of term of insurance policy. But in view of the decision of the Apex Court in Sant Lal (1 supra) and Mukund Dewangan (2 supra), said finding could not be sustained, accordingly reversed.

12. Hence, respondents 2 and 3 being the insurers are liable to pay the compensation to the appellant and accordingly they

[2] AIR 2017 SC 3668 : 2017 ACJ 2011

shall pay the entire compensation amount to the appellant within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellant is entitled to withdraw the same.

13. Accordingly, the appeal is allowed to the extent indicated above.

14. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE M.GANGA RAO

Date: 30.10.2018
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