

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.95 of 2012

JUDGEMENT:

This appeal is directed against the order dated 07.02.2011 in MV OP No. 70 of 2006 on the file of the Chairman, MACT cum District Judge, Chittoor, wherein the claim of the claimant for compensation was allowed in part, awarding a sum of Rs.1,31,900/- with interest at 6% per annum from the date of petition and directed the respondents 1 to 3 therein to deposit the same jointly and severally.

2. The appellant herein is the 3rd respondent-insurer, the 1st respondent is the petitioner, the 2nd respondent is the owner of the Hero-Honda motor cycle and the 3rd respondent is the owner of the Van, in the original petition. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The petitioner filed claim application seeking compensation of Rs.4,00,000/- on account of injuries sustained by him in a motor vehicle accident that occurred on 30.05.2005. The case of the petitioner, in brief, is that on the date of accident at about 1.30 p.m. while he was going on a bicycle to attend his second shift duty in Srinivasa Granite Factory, Chittoor, the 1st respondent, being the rider of a Hero Honda motor cycle bearing No.AP 03 L 8452, came in a rash and negligent manner and dashed him, as a result of which, he fell down and in the meanwhile, the Van bearing No.AP 03 U 3375 ran over his left leg and he sustained a crush injury over the left leg; the petitioner was admitted in Government Hospital, Chittoor and from there, he was shifted to CMC Hospital, Vellore; the Station House Officer, Chittoor I town PS registered a case in Cr.No.55 of 2005 against 1st respondent and the driver of the 2nd

respondent; the 2nd respondent is the owner and the 3rd respondent is the insurer of the Van and all the respondents are jointly and severally liable to pay the compensation, and on account of the crush injury, the petitioner is unable to attend his duty.

4. The 1st and 2nd respondents remained *ex-parte*. The 3rd respondent-insurer filed written statement denying the allegations of the petition and contended that the injured is responsible for the accident and therefore, he is not entitled to compensation; the 1st respondent was not holding a valid driving licence and insurance policy and there was no negligence on the part of the driver of the 2nd respondent and hence, the 3rd respondent is not liable to pay any compensation.

5. On the basis of the above pleadings, the Tribunal framed three issues. In support of his case, the petitioner examined himself as PW.1, an eye witness to the incident, as PW.2 and the doctor who treated him as PW.3 and got marked Exs.A.1 to A.5. No oral evidence was adduced on behalf of the 3rd respondent but Ex.B.1 policy copy was got marked.

6. Heard Sri Ravi Shankar Jandhyala, learned counsel for the appellant and Sri B.S. Reddy, learned counsel for the 1st respondent. None appears for the respondents 2 and 3. Perused the records.

7. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the 1st respondent and the driver of the 2nd respondent Van is not seriously disputed by the appellant. Considering the evidence of PWs.1 and 2, the injured and an eye witness to the accident, coupled with Exs.A.1 FIR and A.2 charge sheet, this Court is of the view that the accident occurred only due to the rash and negligent driving of the 1st respondent and the driver of the 2nd respondent.

8. Coming to the claim, it is the case of the petitioner that, on account of accident, he became disabled and lost his monthly income of Rs.4500/- as a polish worker in Srinivasa Granite Factory, Chittoor. In order to prove his claim, besides examining himself as PW.1, he got examined Dr.Ravindra Reddy as PW.3 and relied upon Ex.A.3 wound certificate and Ex.A.5 discharge summary. As seen from Exs.A.3 and A.5, PW.1 sustained crush injury to left leg and multiple abrasions to right side of face, right hand and lower hip. The Tribunal relying on the decision of this Court in '**Ullanki Kanaka Durgamma vs. Dantuluru Suryanarayana Raju**¹', held that the petitioner is entitled for compensation of Rs.50,000/- for pain and suffering and Rs.2000/- each for two simple injuries. The Tribunal also awarded a sum of Rs.77,900/- towards treatment and medicines, basing on Ex.A.4 bunch of medical bills issued by CMC Hospital, Vellore wherein the petitioner underwent treatment. The genuineness of these bills is not controverted. As seen from Ex.A.5 discharge summary, the petitioner underwent surgeries to his left leg on 30.05.2005, 04.06.2005 and 21.09.2005 and he might have undergone severe pain and suffering, apart from losing his salary during his hospitalization. According to him, on account of crush injury to the left leg, the petitioner became disabled. The petitioner was aged 28 years at the time of accident. Basing on the wound certificate Ex.A.3, bunch of medical bills Ex.A.4 and discharge summary Ex.A.5, I am of the opinion that as the petitioner sustained two grievous injuries, and underwent three surgeries for the said injuries, the amount of Rs.1,31,900/- awarded by the Tribunal under various heads towards compensation needs no interference.

¹ 1997(1) ALD 658

9. Only contention of the appellant-insurer is that, though on issue No.1, the Tribunal held that the accident occurred on account of rash and negligent driving of the 1st respondent and the driver of the 2nd respondent, erred in directing all the respondents to deposit the said amount without apportioning the same between the respondents. I find force in his contention, because, as seen from Exs.A.1 and A.2, the police registered a case against the 1st respondent - rider of the motor cycle, and the driver of the 2nd respondent Van, and filed charge sheet against both of them before the Court. The Tribunal also held that the accident occurred on account of rash and negligent driving of the 1st respondent and the driver of the 2nd respondent. In these circumstances, the Tribunal ought to have apportioned the compensation between the 1st respondent on one hand and the 2nd respondent on the other hand, equally. Admittedly, the 1st respondent has not insured his vehicle with any insurance company. The 2nd respondent has insured his vehicle with the 3rd respondent under Ex.B.1 policy. In view of the facts and circumstances of the case, I am of the opinion that the compensation awarded by the Tribunal should be apportioned equally between the 1st respondent on one hand and the respondents 2 and 3, being the insured and insurer, jointly and severally, on the other hand. The impugned order is modified accordingly. The amount deposited by the appellant-insurer on behalf of the 2nd respondent, shall be given credit to. The petitioner is at liberty to recover remaining half of the award amount from the 1st respondent.

10. In the result, the appeal is allowed in part, to the extent stated above. No order as to costs. Miscellaneous petitions pending, if any, in this appeal, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 14.09.2018
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