

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Miscellaneous Appeal No.3851 of 2004

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 22.03.2002, passed in O.P.No.578 of 1999, by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Adilabad ('the Tribunal', for brevity) whereby, the claim petition filed by the appellant-claimant seeking compensation of Rs.2,10,000/- for the injuries sustained by him in a road accident that occurred on 07.07.1998, was dismissed without granting any compensation.

2. When this matter was called on 05.06.2018, as there was no representation for the appellant-claimant, the matter was directed to be listed today under the caption "For Orders". Despite listing the matter today under the caption "For Orders", there is no representation for the appellant-claimant. This appeal is of the year 2004. Under these circumstances, this appeal can be disposed of on merits without waiting for the learned counsel for the appellant-claimant to advance arguments. Heard the learned Standing Counsel for United India Insurance Company Limited representing the 2nd respondent and perused the record.

3. In the grounds of appeal, the appellant-claimant urged that the Tribunal had not appreciated the evidence of P.W.1 as well as documentary evidence under Exs.A.1 to A.9 in proper

perspective. The appellant-claimant suffered fatal injuries. The claim of the appellant-claimant ought to have been considered under Workmens' Compensation Act, 1923. The Tribunal, without adverting to the legal and factual aspects, dismissed the claim petition erroneously and ultimately prayed to grant compensation along with interest as prayed for.

4. The learned Standing Counsel for the 2nd respondent-Insurance Company would submit that the Tribunal had categorically recorded a finding that the accident occurred due to the rash and negligent driving of the vehicle bearing registration No.AP-01-T-2126 by the appellant-claimant. Though the appellant-claimant contended that the accident occurred due to the rash and negligent driving of the driver of the Tempo Trax Jeep, he did not choose to make the owner of the said vehicle and its insurer as parties to the claim petition. The findings of the Tribunal are based on evidence on record and the regulations governing at that point of time. There is nothing to take a different view and ultimately prayed to dismiss the appeal.

5. In view of the rival contentions, the point that arises for determination in this appeal is whether the appellant-claimant is entitled for compensation as claimed for.

6. To substantiate his claim, the appellant-claimant himself deposed as P.W.1 and got marked Ex.A.1-Attested Xerox Copy of F.I.R, Ex.A.2-Out-Patient Chit, Ex.A.3-Medical Prescription Silp, Ex.A.4-Permanent Disability Certificate, Ex.A.5-Medical bills (10 Nos.), Ex.A.6-Driving Licence of Sk.Shukruddin, Ex.A.7-

Scene of offence panchanama, Ex.A.8-(23) medical bills and Ex.A.9-Attested Xerox copy of policy. Admittedly, the appellant-claimant filed the claim petition before the Tribunal under Section 166 of the Act. In a petition of that nature, the claimant has to prove rashness and negligence on the part of the driver of the offending vehicle, i.e., Tempo Trax Jeep. Except self-serving statement of P.W.1 (appellant-claimant), there is no other evidence attributing rashness or negligence on the part of the driver of the Tempo Trax Jeep. Further, the owner of the Tempo Trax Jeep and its insurer are not made parties to the claim petition. As per the criminal case record placed before the Tribunal, particularly Ex.A.1-Attested Xerox copy of F.I.R., it was held by the Tribunal that it is not the driver of the Tempo Trax Jeep, but it is appellant-claimant who was responsible for the accident. Rashness and negligence was also attributed to the appellant-claimant. The Tribunal, relying on the decision of the Apex Court in *S.Kaushnuma Begum and others Vs. The New India Assurance Company Limited*¹ and the Rule of Strict Liability laid down in *Rylands Vs. Fletcher's* case, held that the appellant-claimant is responsible for the occurrence of the accident and that he is not entitled for any compensation from its insurer. The findings of the Tribunal are based on evidence and record. The appellant-claimant has not proved the rashness and negligence on the part of the driver of the Tempo Trax Jeep. Further, since the driver of the Tempo Trax Jeep and its insurer were not made parties to the claim petition, the Tribunal rightly

¹ AIR 2001 SC 85

dismissed the claim petition and there is no infirmity in doing so.

The appeal is devoid of merit and is liable to be dismissed.

7. In the result, the appeal is dismissed.

Miscellaneous Petitions pending, if any, shall stand closed.

No order as to costs.

Dr. SHAMEEM AKTHER, J

12th June, 2018
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