

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.328 OF 2011

JUDGMENT:

Appellant-Insurance Company filed this appeal against the order and decree dated 02.09.2002 passed in M.V.O.P.No.77 of 2002 by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Cuddapah, granting compensation of Rs.1,64,000/- as against the claim of Rs.1,75,000/- for the injuries sustained by the first respondent in the motor accident occurred on 11.10.2000.

The first respondent-claimant filed claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.1,75,000/- from the appellant as well as respondent No.2 herein alleging that on 11.10.2000 when he was travelling in auto from Badripalli to Mydukur at about 4.30 p.m. when the auto reached near K.C. Canal on Mydukur-Proddatur road, the offending jeep bearing No.AP04-B-4311 being driven by its driver came in opposite direction in a rash and negligent manner and dashed against the auto, due to which, the first respondent sustained injuries. Immediately, he was shifted to Government Hospital, Cuddapah, where he took treatment for 21 days as in-patient and spent Rs.20,000/- towards medical expenses. He further alleged that he was earning Rs.5,000/- per month by doing coolie work and due to the injuries sustained, he was unable to do any work. Hence, he claimed compensation of Rs.1,75,000/-.

Appellant-Insurance Company filed a counter affidavit denying the averments of the claim petition and contending that the claim petition was bad for non-joinder of necessary parties, driver was not having valid driving license at the time of accident,

thereby terms of the policy were violated and thus prayed to dismiss the claim petition.

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

- 1) Whether the accident occurred due to rash and negligent driving of the jeep bearing No.AP04-B-4311 by its driver?
- 2) Whether the petitioner is entitled for compensation and if so to what amount and from whom?
- 3) To what relief?

On behalf of the first respondent, PWs 1 and 2 were examined and Exs.A.1 to A.6 were got marked. On behalf of the appellant, no oral and documentary evidence was adduced.

The Tribunal based on the evidence of PW.1-injured coupled with the documentary evidence of Exs.A.1 to A.3, held that the accident was occurred due to the rash and negligent driving of driver of the offending jeep and thereby answered issue No.1 in favour of the first respondent.

As regards quantum of compensation, the Tribunal based on the evidence of P.W.2-Doctor and Exs.A.4 to A.6, concluded that the first respondent sustained 30% disability and granted Rs.1,20,960/- towards compensation. The Tribunal also granted Rs.18,000/- towards medical bills, Rs.20,000/- towards pain and suffering and Rs.5,000/- towards transport charges. Thus, in all, the Tribunal granted 1,63,969/- rounded off to Rs.1,64,000/- towards compensation along with costs and interest @ 9% per annum. Aggrieved by the same, the present appeal came to be filed by the appellant-Insurance Company.

Learned counsel for the appellant would contend that the Tribunal failed to see that as on the date of accident, no valid

insurance was in existence; the cheque issued by the owner of the crime vehicle towards premium was returned unpaid and the same was informed to the owner, hence, it is for the owner of the crime vehicle to prove that Insurance was in existence at the time of accident. He would further contend that though the owner of the vehicle appeared before the Tribunal but failed to file any counter to the effect that he was not liable to pay compensation.

Learned counsel for the first respondent made his submissions sustaining the impugned order passed by the Tribunal.

Having heard the learned counsel for the parties and perused the material on record, it is found that though the learned counsel for the appellant-Insurance Company vehemently contended that as on the date of accident, the Insurance Policy was not in existence in respect of the crime vehicle, it appears that for the first time such a plea is taken before this Court and the said plea was not urged before the Tribunal. Further, no documents were filed before the Tribunal to prove that the owner of the crime vehicle has not paid the premium and the cheque issued by him towards premium was dishonoured. No documents like dishonoured cheque, letter putting the said facts in the notice of the owner of the vehicle, etc. were produced either before the Tribunal or before this Court in support of the plea taken by the appellant. Thus, except merely taking such plea, no evidence was led by the Insurance Company to prove their contention. Hence, this Court is of the view that in the absence of any evidence, the plea of the appellant that as on the date of accident, the Insurance Policy was not in existence cannot be sustained.

The Tribunal based on the evidence of P.W.1 coupled with Exs.A.1 to A.3, held that the accident was occurred due to rash and negligent driving of the crime vehicle by its driver. In the absence of any contra evidence in that regard, the finding of the Tribunal cannot be interfered with.

As regards quantum of compensation, though the injured claimed that he was earning Rs.5,000/- per month by doing commission business in seasonal crops, the Tribunal has taken the earnings of the injured at Rs.70/- per day and Rs.2100/- per month, on the ground that no documents were filed to prove the income of the claimant. The earnings taken by the Tribunal cannot be said to be on higher side and hence need no interference by this Court. Based on Ex.A-6 Disability Certificate, the Tribunal has rightly considered the disability suffered by the injured at 30% and arrived the loss of earnings as Rs.1,20,960/-. That apart, the Tribunal awarded Rs.18,000/- towards medical bills, Rs.20,000/- towards pain and suffering and Rs.5000/- towards transport charges, which cannot be held to be on higher side and are in tune with the injuries suffered by the claimant. Thus, viewed from any angle, the impugned order warrants no interference of this Court.

Therefore, the appeal is dismissed.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

31.10.2018
sur