

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1265 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/respondent, aggrieved by the grant of compensation of Rs.29,400/- as against a claim of Rs.1,00,000/- to the respondent/claimant with interest at the rate of 9% per annum from the date of petition till the date of realization, by the learned Chairman, Motor Accident Claims Tribunal – cum - V Additional District Judge (Fast Track Court), Eluru (for short, “the Tribunal”) *vide* order, dated 14.02.2005, passed in O.P.No.614 of 1999.

2. Heard the submissions of the learned counsel appearing for the appellant/respondent and the learned counsel for the respondent/claimant, and perused the material on record.

3. Learned counsel for the appellant would contend that the appellant is not responsible for the occurrence of the accident; that the respondent/claimant was in a drunken state and he is responsible for the occurrence of the accident and the injuries; that the owner and insurer of Rajdoot Motor Cycle bearing No.A.T.Y.4091 are not made as parties and for want of necessary parties, the impugned award is liable to be set aside and ultimately, prayed to allow the appeal as prayed for.

4. On the other hand, learned counsel for the respondent/claimant would contend that there is oral evidence and documents to establish the rashness and negligence on the

part of the appellant in driving Rajdoot Motor Cycle bearing No.A.T.Y.4091 resulting in injuries to the respondent/claimant; that the Tribunal had rightly assessed and granted just and reasonable compensation; that when a notice was issued to the appellant, he did not give any explanation or reply and further, the claimant was not cross examined with regard to the issuance of the notice; that 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 the parties, the following points come up for determination:

- 1. Whether the subject accident occurred due to the rash and negligent driving of Rajdoot Motor Cycle bearing No.A.T.Y.4091 by the appellant resulting in injuries to respondent? and***
- 2. Whether the Tribunal is justified in granting the compensation of Rs.29,400/- against the appellant herein?***

6. **POINT No.1:-**

There is a specific evidence of P.W.1 that he suffered grievous and simple injuries in an accident that occurred on 07.01.1998 due to the rash and negligent driving of the Rajdoot Motor Cycle bearing No.A.T.Y.4091 by the appellant herein. The documents marked as Ex.A-1 – copy of F.I.R. and Ex.A-3 – copy of charge sheet reveals the rashness and negligence on the part of the appellant. Ex.A-2 – copy of wound certificate reveals the injuries suffered by the claimant. It is not a case where the appellant lodged any police report or took any steps to prosecute the respondent/claimant.

7. It is also contended by the learned counsel for the appellant that the respondent/claimant was in a drunken state. Under

Ex.A-2 – wound certificate, there is no such mention. Under these circumstances, it can be considered that the accident occurred due to the rash and negligent driving of Rajdoot Motor Cycle bearing No.A.T.Y.4091 by the appellant. The trial Court had rightly answered the issue and no interference of this Court is warranted.

8. **POINT No.2:-** The Tribunal, while dealing with the assessment and award of compensation, took the nature of the injuries suffered by the claimant and granted compensation on different heads as mentioned herein:

<i>a. Loss of earnings</i>	<i>....</i>	<i>Rs. 4,500/-</i>
<i>b. Medical expenses</i>	<i>....</i>	<i>Rs. 3,000/-</i>
<i>c. Attendant charges</i>	<i>....</i>	<i>Rs. 900/-</i>
<i>d. Extra Nourishment</i>	<i>....</i>	<i>Rs. 1,000/-</i>
<i>e. Pain and sufferance and loss of earning capacity</i>	<i>....</i>	<i>Rs.20,000/-</i>
<i>Total</i>	<i>Rs.</i>	<i>Rs.29,400/-</i>

As far as the assessment and **grant** of compensation is concerned, there is no infirmity and the same is just and reasonable. There is nothing to interfere with the same.

9. It is evident from Ex.A-4 – photo copy of the office copy of the notice that a notice was issued to the appellant herein prior to filing of the impugned Original Petition calling upon him to pay damages, but the appellant neither gave any reply to that notice nor furnished any insurance particulars or ownership particulars. Simply by way of counter, he raised the contention. The appellant is guilty of negligence in driving the offending motor cycle resulting in injuries to the respondent/claimant. In these circumstances,

there is nothing wrong in filing the O.P. against him and proceeding with. In view of the above discussion, the findings of the Tribunal cannot be faulted. The appeal is devoid of merit and is liable to be dismissed.

10. In the result, the appeal is dismissed. There shall be no order as to costs.

11. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

Date : 04.07.2018
AMD

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