

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

MACMA No.2152 of 2012

JUDGMENT:

This appeal is filed questioning the judgment and decree 29.07.2011 in MVOP No.351 of 2008 passed by the Motor Accidents Claims Tribunal-cum-VI Additional District Judge (FTC), Krishna at Machilipatnam.

The MVOP was filed by the petitioners claiming compensation of Rs.3,00,000/- for an accident that occurred on 05.12.2007. For the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.4 were marked. For the respondents, no witnesses were examined. No documents were also marked. The Tribunal passed an order awarding a sum of Rs.1,21,000/- with interest. Questioning the same, the appeal is filed by the insurance company.

Heard Sri Gadi Ramachandra Reddy, learned counsel for the appellant/insurance company, Sri Bathina Kamalakara Rao, learned counsel for the respondents 1 & 2/petitioners and Sri Gudiseva Narasimha Rao, learned counsel for the respondent No.3/owner of the vehicle.

The essential ground that is raised by the learned counsel for the appellant/insurance company is that as

the two vehicles are involved in the accident, the liability should be apportioned. The learned counsel highlights para-14 of the judgment of the Tribunal wherein the Tribunal discussed that along with the auto bearing No.AP16-Y-6563, another truck bearing No.AP16-Y-6223 was also involved in the accident. Therefore, he prays for apportionment of the liability between them as joint tortfeasors. The learned counsel also submits that as the accident was caused by another vehicle also, the appellant/insurance company cannot be made solely liable to pay the compensation.

In response to the learned counsel for the first respondent before the Tribunal/owner of the vehicle argues that as per the settled law on this subject, the petitioners can sue either one of the tortfeasors. Although an objection was taken in the counter affidavit that neither the owner nor the insurer of the second vehicle added as parties to the case; it does not appear that an issue was framed and an order was invited on the same.

This Court after hearing both the learned counsel and after perusing the judgment reported in **HDFC Bank Ltd. v. Kumari Reshma**¹ is of the opinion that the petitioners in the Tribunal have the option to claim

¹ 2015 ACJ 1

compensation against any one of the vehicles that is involved in the accident. In the case on hand, despite taking the said plea, it was not followed up by the appellant/insurance company. As can be seen, there are no oral or documentary evidence introduced by the respondents before the Tribunal. Therefore, in view of the absence of evidence, the question of apportionment of the liability of awarded amount does not arise. Thus, legally and factually, this Court finds no merits in the appeal.

In the result, the appeal is dismissed. The judgment and decree 29.07.2011 in MVOP No.351 of 2008 passed by the Motor Accidents Claims Tribunal-cum-VI Additional District Judge (FTC), Krishna at Machilipatnam are confirmed in all respects. In the circumstances of the case, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision, shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 15.11.2018

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