

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.2161 of 2006 & 3793 of 2008

COMMON JUDGMENT:

Since both the appeals arise out of the common order, they are being disposed of by this common judgment.

2. Both the appeals are filed against the common order and decree dated 22-02-2006 passed in O.P.No.782 of 2002 by the M.A.C.T.-cum-District Judge, Nizamabad (for short 'the Tribunal').

3. Brief facts of the case are that the claimant filed the claim petition against the owner and insurer of the crime vehicle claiming compensation of Rs.10.00 lakhs for the injuries sustained in the accident occurred on 04-12-2001 due to the rash and negligent driving of the driver of the motorcycle bearing No.AP 25 G 5910, when he is proceeding as a pillion rider on motorcycle bearing No.AP 25/G 7176 at Mupkal village shivar.

4. In the claim petition, the insurer of the crime vehicle filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver of the crime vehicle and accordingly, granted an amount of Rs.1,99,688/- under various heads with interest @ 7.5% p.a., payable by the respondents jointly and severally.

6. Aggrieved by the order of the Tribunal, the claimant filed MACMA No.2161 of 2006 and the insurer filed MACMA No.3793 of 2008.

7. Heard both sides.

8. Admittedly, the Tribunal has framed issue No.1 viz., whether the accident has taken place due to rash and negligent driving of the vehicle bearing No.AP 25/G 5910 by its driver. The said issue has been dealt with in the light of Ex.A-2 charge sheet. But the Tribunal gave a finding that the claimant is traveling on motorcycle bearing No. AP 25/G 5910 as a pillion rider, which is factually incorrect. The Tribunal ought to have framed the issue with regard to find out whether the accident has taken place due to rash and negligent driving of the vehicle bearing No. AP 25/G 5910 or bearing No.AP 25/G 7176 or with composite negligence of both the vehicles and then fasten the contributory negligence, if found.

9. In the absence of such finding with regard to which vehicle was driven in a rash and negligence manner and due to which the claimant was sustained injuries, the Tribunal cannot come to the right conclusion since there must be better appreciation of evidence on that aspect. In view of same, for better appreciation of evidence and for rectification of discrepancies, this Court feels that the matter needs to be remanded.

10. Accordingly, both the appeal are allowed setting aside the order of the Tribunal in O.P.No.782 of 2002 dt.22-02-2006. The matter is remanded back to the Tribunal for fresh consideration on issue No.1 and for disposal of the same, after affording reasonable opportunity to both the

parties to adduce their oral and documentary evidence and after following the latest judgments of the Apex Court while computing the quantum of compensation. Since the matter pertains to the year 2002, the Tribunal shall dispose of the O.P. on priority basis as expeditiously as possible. No costs.

11. Further, it is represented by Sri T.Ramulu, learned Standing Counsel for the insurer that in pursuance of the interim orders of this Court passed on 23-08-2006 in MACMA MP No.3957 of 2006, half of the decretal amount has been deposited.

12. It is needless to observe that any amounts deposited shall be subject to the outcome of the order that would be passed in the O.P. by the Tribunal.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

JUSTICE T.AMARNATH GOUD

Date: 09-12-2019
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