

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

M.A.C.M.A.Nos.1780 & 2006 of 2010

COMMON JUDGMENT:

1 These appeals are filed under Section 173 of the M.V. Act, assailing the judgment and award dated 20-07-2010 passed in O.P.No.2182 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad.

2 The facts that led to the filing of these appeals are as follows:

3 For the sake of convenience, the parties to these appeals, shall hereinafter, be referred to as they were arrayed before the Tribunal corresponding to MACMA No.2006 of 2010.

4 On 03-09-2006, at about 10.30 pm, while the petitioner was proceeding on foot, and when he reached opposite to the UTI Bank ATM in Humayun Nagar, the driver of crime vehicle i.e. Auto bearing No.AP 11X 3948 drove it rash and negligently and dashed him, as a result of which, he sustained grievous injuries, and was hospitalised and spent huge amount towards medical expenses. Thus, the petitioner filed the claim petition claiming compensation of Rs.7.00 lakhs against the 1st respondent-owner of the crime vehicle and the 2nd respondent-insurer by contending that he is aged about 40 years, doing agriculture and earning Rs.5,000/- per month.

5 First respondent – owner of the crime vehicle remained *ex parte*.
Second respondent - insurer filed counter denying the material averments made in the petition *inter alia* contending that the accident occurred due to the negligence of the petitioner and that the insurance company is not liable to pay any compensation and that the compensation claimed is on higher side.

6 During the course of trial on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A.22 were marked. On behalf of the second respondent – insurance company, Exs.B.1 to B-7 were marked.

7 Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the crime vehicle and allowed the petition in part by awarding compensation of Rs.4,90,000/- and directed the respondent Nos.1 and 2 jointly and severally to pay the said amount, but the 2nd respondent is entitled to recover the amount from the 1st respondent and that the 2nd respondent as insurer is also directed to deposit the same with interest at 7.5% p.a.

8 Being aggrieved by the award and judgment, the insurance company filed MACMA No.1780 of 2010 and the claimant filed MACMA No.2006 of 2010 being not satisfied with the said amount of compensation.

9 Heard the learned counsel for the petitioner and the learned Standing Counsel for the second respondent.

10 Learned Standing Counsel for the insurance company contends that the Tribunal erred in considering the age of the driver of the crime vehicle as he is a minor aged about 15 years and also he does not have driving licence at the time of accident. In support of his contention, he relied up on the judgment of the Supreme Court in **United India Insurance Co. Ltd. Vs. Rakesh Kumar Arora and others**¹ wherein the Supreme Court, in a similar set of facts, exempted the insurance company from the liability of compensation. Hence, he prayed to set aside the award passed by the Tribunal.

11 Smt. B.Roja Ramani, learned counsel for the claimant, contends that the respondent-insurance company failed to prove their contention that the minor has driven the crime vehicle without having driving licence. In fact, the 1st respondent-owner of the crime vehicle has driven the crime vehicle at the time of accident with valid licence. The Tribunal has rightly awarded the compensation and fastened the liability on the insurance company in a right manner. But however, the quantum of compensation awarded by the Tribunal is very meagre with regard to the grievous injuries suffered by the claimant. In support of her contention, she relied upon the judgments of the Supreme Court in **Singh Ram Vs. Nirmala and others**² and **Pappu and others Vs. Vinod kumar Lamba and another**³. Therefore, she prayed that the award of compensation granted by the Tribunal may be enhanced by

¹ 2008 ACJ 2855

² 2018 ACJ 1264

³ 2018 ACJ 690

directing the insurance company to pay the same and recover the same from the owner of the crime vehicle.

12 Admittedly, there is no dispute with regard to the accident occurred due to the rash and negligence of the driving of the driver of the crime vehicle. But so far as the quantum of compensation is concerned, the Tribunal has to look into the evidence before coming to pass the award of compensation of Rs.3,00,000/- under the head of injury sustained to the spinal cord besides pain and suffering of the claimant since the Tribunal has not recorded sufficient reasons in awarding the said compensation. Further, the Tribunal, on the issues of fastening the liability and quantum of compensation, has not dealt with the matter in a proper manner by following the judgments of the Apex Court.

13 Therefore, I am of the considered view that the interest of justice would be met, if both the matters are remanded to the Tribunal for fresh consideration by re-appreciating the oral and documentary evidence and for passing reasoned order on the issues of fastening the liability and awarding the quantum of compensation.

14 Accordingly both the appeals are disposed of. Both the matters are remanded to the Tribunal for fresh consideration and to pass an award in accordance with settled principles of law. Further, since the appeals pertaining to the year 2010, the Tribunal is directed to dispose of both the appeals within a period of three months from the date of receipt of a copy of this order. No order as to costs.

18 As a sequel, miscellaneous petitions pending in these appeals, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 31.7.2019.

Note:-

Issue C.C. in a week.

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