

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1434 OF 2006

JUDGMENT:

This appeal is filed by the insurance company aggrieved by the order and decree dated 19.10.2005 passed in O.P.No.327 of 2003 on the file of the III Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar.

2. The brief facts of the case are that on 06.4.2003, the claimant-respondent No.1 herein was driving an auto bearing registration No.AP-28-U-5592 and was proceeding from Habsiguda to Nacharam and at about 11-45 pm., one lorry tanker bearing registration No.AP-36-T-8809 coming from Habsiguda in a rash and negligent manner with high speed, having lost control over the vehicle, dashed to the claimant's auto from backside near IICT Gate No.8, Nacahram and due to the said impact, the claimant sustained grievous injuries and dislocation of shoulder besides the auto being completely damaged. Immediately, the claimant was shifted to Gandhi Hospital, Secunderabad, for treatment and a case in Crime No.105 of 2003 was registered against the driver of the lorry tanker and the charge sheet was filed after investigation. Hence, the claimant filed the aforesaid OP claiming compensation of Rs.1,00,000/- against the owner and the insurer of the offending lorry, *i.e.*, respondent Nos.1 and 2 herein respectively, for the injuries sustained by him.

3. Before the Tribunal, respondent No.1-owner of the offending vehicle remained *ex parte*. Respondent No.2 filed its counter and also additional

counter denying the averments of the claim petition and stated that there is violation of terms and conditions of the insurance policy by respondent No.1 and as such, it is not liable to pay the compensation and prayed to dismiss the claim petition.

4. 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 of the driver of the offending lorry and accordingly, awarded a total compensation of Rs.38,750/-, with interest @ 9% per annum. Aggrieved by the said award, the insurance company filed the present appeal.

5. Heard Sri T.Ramulu, learned Standing Counsel for the appellant-insurance company and perused the evidence and material on record.

6. Though served, respondent No.1-claimant has not chosen to enter appearance through a counsel.

7. Sri T.Ramulu, learned Standing Counsel for the appellant-insurance company, submits that the Tribunal ought to have dismissed the O.P. as respondent No.1-claimant was not holding a valid driving license at the time of accident; that the Tribunal erred in exonerating the liability of the owner of the offending lorry; and that the Tribunal erred in not appreciating the evidence of R.Ws.1 and 2 and prayed to allow the appeal.

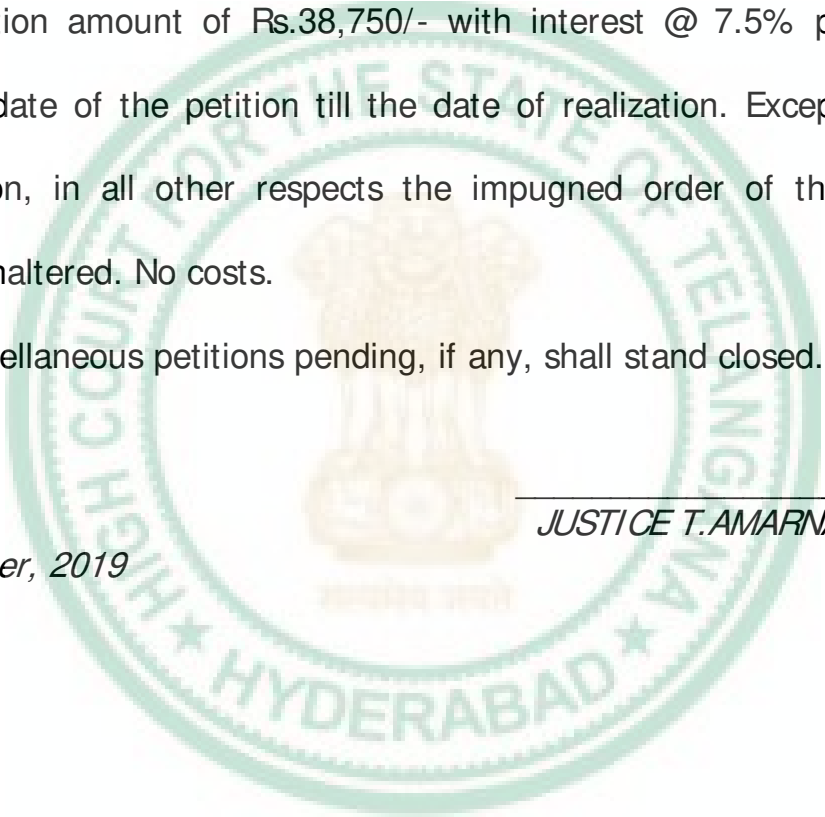
8. Admittedly, the offending lorry is insured with the appellant-insurance company and the driver of the said vehicle was possessing learner's license and as such, the Tribunal at para 15 of the impugned order held that the owner and the insurer of the said vehicle are jointly

liable to pay the compensation amount of Rs.38,750/- to the claimant with interest @ 9 % per annum. On appreciation of the entire evidence on record, this Court is of the opinion that the Tribunal ought to have fastened the liability on the owner and insurer of the offending vehicle 'joint and severally' instead of 'jointly' alone, but that it is an omission on the part of the Tribunal.

In view of the above, this appeal is partly allowed and the appellant and respondent No.2 herein are jointly and severally liable to pay the compensation amount of Rs.38,750/- with interest @ 7.5% per annum from the date of the petition till the date of realization. Except the said modification, in all other respects the impugned order of the Tribunal remains unaltered. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

24th October, 2019
dr

A large, faint, circular watermark seal of the High Court of Andhra Pradesh, Hyderabad, is centered in the background. It features the text "HIGH COURT OF THE STATE OF ANDHRA PRADESH" around the top and "HYDERABAD" around the bottom, with a central emblem.
JUSTICE T. AMARNATH GOUD