

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.49 OF 2013

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 19.04.2012 passed in O.P.No.1496 of 2009 by the Motor Accidents Claims Tribunal-cum-IX Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that on 28.04.2009 at about 11.30 P.M., while the appellant was proceeding on a Hero Honda Passion Plus motorcycle bearing No.AP1R 6389 from Toli Chowki towards Gachi Bowli side in Hyderabad, car bearing No.AP9AT 9376, came in the wrong side with high speed in a rash and negligent manner and dashed the motorcycle, as a result of which, the appellant fell down and received injuries. He filed the aforesaid OP against respondent No.1-owner and respondent No.2 insurer of car, claiming compensation of Rs.3,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 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.

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 car by its driver and awarded compensation of Rs.1,78,000/- with interest @ 7% per annum, holding that since the driver of the car was not holding a valid driving licence, respondent No.1 alone is liable to

pay the said compensation. Challenging the said order, the appellant filed the present appeal.

5. Sri B.Venkat Reddy, learned counsel appearing for the appellant, submitted that though the appellant produced oral and documentary evidence, the Tribunal granted meager compensation amount. He further submitted that though the car is insured with the second respondent, the Tribunal erred in fixing the liability against the owner of the car and exonerating the liability of the insurance company. In support of his contention, he relied on a decision reported in **National Insurance Co.Ltd. V. Swaran Singh¹**. He therefore prayed to set aside the order passed by the Tribunal.

6. Sri T.Mahender Rao, learned standing counsel appearing for respondent No.2, submitted that the Tribunal passed a well considered order by taking in to consideration the oral and documentary evidence on record. He further submitted that since the driver had no valid driving licence to drive the car in India, the Tribunal has rightly fixed the liability on the owner of the car. In support of his contention, he relied on a decision reported in **Sardari V. Sushil Kumar²**, and prayed to dismiss the appeal.

7. It is the only contention of the learned counsel for the appellant that though the car was insured with the second respondent herein, the Tribunal has wrongly exonerated the liability of the insurance company. It is not in dispute that the owner of the car handed over the same to the driver, who is a foreign lady, knowing fully well that she was not having any valid

¹ 2004 ACJ 1

² 2008 ACJ 1307

and effective driving licence issued in India and thereby violated the provisions of Section 180 of Motor Vehicle Act. Therefore, the order of the Tribunal exonerating the liability of the second respondent is quite reasonable and there are no grounds to interfere with the same. But, the Tribunal held that respondent No.1 alone is liable to pay the compensation awarded to the appellant. In **Swaran Singh's** case (Supra), the Apex Court held that the insurance company is liable to satisfy the award in favour of third party at the first instance and then to recover the awarded amount from the owner or driver of the vehicle even where the insurance company could establish breach of terms of policy on the part of the owner of the vehicle.

9. In view of the law laid down by the Apex Court, the second respondent is liable to pay the compensation to the appellant at the first instance and recover the same from the first respondent thereafter. Except the above modification, the order passed by the Tribunal remains unchanged.

10. Accordingly, the Motor Accident Civil Miscellaneous Appeal is partly allowed, as indicated supra. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 04.09.2019
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