

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1084 OF 2005

JUDGMENT:

This appeal is filed by the claimant against the judgment and decree, dated 10.01.2005 passed in O.P.No.1239 of 2001 by the Motor Accidents Claims Tribunal-cum-VI Additional District Judge (FTC), Nizamabad (for short 'the Tribunal).

2. For the sake of convenience, the parties herein are referred to as arrayed before the tribunal.

3. It is the case of the petitioner that on 29.03.2001 at 10.45 p.m, when he along with others were travelling in a jeep bearing No.MTJ 7044 from Nandipet to Nizamabad and on the way at Chikli Village shivar at a culvert the driver of the jeep drove the same at high speed in a rash and negligent manner and dashed against a culvert, for which the jeep turned turtle and the petitioner sustained fractures and other injuries and that after the accident, he was treated in Government Head Quarters Hospital, Nizamabad and thereafter, he took treatment from private doctors, as against the claim of Rs.1,50,000/-.

4. Respondent No.1 remained exparte. Respondent No.2 filed written statement denying the claim petition and that it is also contended that it is for the petitioner to prove that at the time of accident the driver of the jeep was having valid driving license and it was having permit to ply and also contended that the driver of the jeep allowed more passengers and could not control the jeep, for which the accident occurred and hence, prayed to dismiss the claim petition.

5. In order to prove the case of the claimant, himself examined as PW.1 and Dr L.Ramulu examined as PW.2 and marked Exs.A1 to A.5 on his behalf. No oral or documentary evidence is adduced on behalf of the respondents in support of their contentions. Basing on the pleadings, oral and documentary evidence, the tribunal framed the following issues:

- 1) Whether the accident occurred due to rash and negligent driving of the driver of the jeep bearing No.MTJ 7044 by its driver?
- 2) Whether the petitioner is entitled for compensation? If so, to what just amount and from which of the respondents?
- 3) To what relief?

6. On considering the oral and documentary evidence, the tribunal dismissed the claim petition that the petitioner failed to prove that he sustained injuries, loss of earnings and not filing any medical certificates and that as the petitioner failed to prove injuries etc. he is not entitled to claim any compensation though respondent No.2 is liable to pay the compensation.

7. Learned counsel appearing for the claimant contended that the tribunal erred in granting compensation though PWs.1 and 2 were examined and filed Exs.A1 to A5 and hence, prayed to grant just and proper compensation.

8. Learned standing counsel for the insurance company contended that the decree and judgment passed by the tribunal is well considered and that the accident occurred due to rash and negligent driving of the driver of the jeep and that the driver of the jeep allowed more passengers and could not control the jeep and that as the claimant is gratuitous passenger, he is not entitled for any relief and that if any compensation is granted, direct the insurance company to pay and recovery.

9. It is the case of injuries. There is no dispute with regard to the manner of accident and involvement of the vehicle. In order to prove the injuries sustained by the petitioner, he examined PW.2-Dr L.Ramulu and filed Ex.A.3-wound certificate, Ex.A.4-disability certificate issued by PW.2 and Ex.A.5 copy of cover note of insurance company. As per evidence of PW.2 – doctor and Ex.A.3 – wound certificate, the petitioner sustained fracture of both bones of left leg, grievous in nature and fracture of both wrists lower end of radius, grievous in nature and suffered pain and suffering. Therefore, the petitioner is entitled for Rs.15,000/- towards injuries to both bones of left leg and both wrists, which are grievous in nature, Rs.15,000/- towards expenditure for treatment and Rs.6,000/- towards pain and suffering. Thus, the petitioner is entitled for compensation of Rs.36,000/- with interest @ 7.5% per annum from the date of petition till the date of realisation. The injured claimant is entitled to withdraw the compensation amount soon after the deposit is made. Since the driver allowed more passenger there is violation of policy conditions. Therefore, the insurance company first pay the compensation amount within three months from the date of this judgment and recovery the same from the owner of the crime vehicle.

10. In view of the above, M.A.C.M.A. is partly allowed setting aside the judgment and decree, dated 10.01.2005 passed in O.P.No.1239 of 2001 by the Motor Accidents Claims Tribunal-cum-VI Additional District Judge (FTC), Nizamabad. There shall be no order as to costs.

Miscellaneous petitions, if any pending in these appeals shall stands closed.

T.AMARNATH GOUD,J

Date 26.09.2019
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