

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No. 1759 of 2012

JUDGEMENT:

Aggrieved by the order passed by the Chairman, Motor Accident Claims Tribunal-cum-II Addl. District Judge, Madanapalle, whereby the Tribunal awarded an amount of Rs.1,13,550/- towards compensation to the claimant against the 1st respondent as against the claim of Rs.10,00,000/-, this instant appeal is preferred by the claimant.

2. For the sake of convenience, both the parties in the appeal will be referred to as they are arrayed in the claim petition.

3. The claimant filed the claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 against the respondents praying the Tribunal to award an amount of Rs.10,00,000/- towards compensation for the injuries sustained by him in a motor vehicle accident that occurred on 03.06.2008.

4. Facts germane to dispose of the appeal may briefly be stated as follows:

The claimant was engaged as a cleaner of a lorry bearing registration No.AP 02V 5965 of the 1st respondent and on the instructions of the 1st respondent, brinjals were loaded in the said lorry for taking them to Chennai. On 03.06.2008 at about 11.00 p.m. when the lorry reached Bangarupalem bus stop on Palamaner-Chittoor road, the driver of the lorry drove the same at high speed behind a lorry bearing registration No.TN 23T 3632 and when the said lorry stopped, the driver of the lorry of the 1st respondent could not control it and dashed against the lorry No.TN 23T 3632 from behind and on account of the said impact, the petitioner sustained severe injuries. The 1st respondent is the owner and the 2nd respondent is insurer of the offending lorry bearing registration No.AP 02V 5965, hence, both the respondents are jointly and severally liable to pay compensation to the claimant.

5. The respondents filed written statements separately by denying the manner of accident.

It is pleaded by the 2nd respondent/Insurance company that the driver of the offending lorry was not having valid driving licence at the time of accident and the claim of the claimant is excessive.

6. Based on the above pleadings, the Tribunal settled the following issues for trial:

1. Whether the accident occurred due to rash and negligent driving of lorry bearing No.AP 02V 5965 resulting in injuries sustained by the petitioner by name Bandarla Naveen Kumar?
2. Whether the petitioner is entitled for compensation? If so, by whom and to what amount?
3. To what relief?

7. During the course of enquiry in the claim petition, on behalf of the claimant, P.Ws.1 to 4 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B.1 was marked.

8. At the culmination of the enquiry, after considering the evidence on record and on appreciation of the same, the Tribunal came to the

conclusion that the accident occurred because of rash and negligent driving of the driver of the offending lorry of the 1st respondent and accordingly, allowed the petition in part granting an amount of Rs.1,13,550/- towards compensation to the claimant with proportionate costs and interest at 9% p.a. from the date of petition till the date of payment by the 1st respondent, while dismissing the claim petition against the 2nd respondent. Being aggrieved by the impugned award, the claimant preferred the instant appeal.

9. Heard learned counsels for both the parties and perused the record.

10. At the time of hearing, learned counsel for the appellant/claimant confined his arguments only to the aspect of exoneration of the 2nd respondent/Insurance company from payment of compensation to the claimant. Although the appeal has been filed on the other ground alleging that the compensation arrived at by the Tribunal is very less, the appellant did not press the said ground during the course of arguments in the appeal.

11. Therefore, the only legal ground that has to be considered in this appeal is, whether the exoneration of the Insurance company from payment of compensation to the claimant is legally sustainable or not?.

12. The contention of the claimant is that he was travelling in the offending lorry as a cleaner. The pleadings of the claimant are that he was travelling in the offending lorry and the driver of the offending lorry drove the same at high speed and dashed another lorry. Though the relationship of the claimant with the 1st respondent/owner of the offending lorry is silent in his pleadings, but he admitted in his cross-examination that the 1st respondent is his mother. The evidence of the claimant as P.W.1 goes to show that on the instructions of the 1st respondent, brinjals were loaded into the offending lorry and the lorry was proceeding towards Chennai, at that time, the accident occurred. As per the evidence of P.Ws.2 and 4, the claimant was residing at Madanapalle for pursuing his further studies after Intermediate. The case of the claimant is that due to misunderstandings between him and his mother, he came out of the house, but the same is not proved

by the claimant. As it is the case of the claimant that he was engaged as a cleaner of the lorry of the 1st respondent, the entire burden is on the claimant to prove that he used to work as a cleaner in the offending lorry of his mother/1st respondent.

13. Ex.B.1-copy of insurance policy shows that the risk of third party is only covered and the risk of the claimant, who is son of the 1st respondent/owner of the offending vehicle, is not covered. A reliance is placed by the learned counsel for the 2nd respondent/Insurance company on the decision of the Hon'ble Supreme Court in ***New India Assurance Co.Ltd. Vs. Sadanand Mukhi***¹ wherein it is held that “*where the claimant is not third party in relation to Insurance company, the liability of the Insurance company to compensate the said claimant does not arise*”. Another reliance is also placed on the decision of the Hon'ble Apex Court in ***United India Insurance Company Limited Vs. M. Om Prakash***² wherein it is held that “*the claimants in all the three original petitions are not third parties either*

¹ 2009 ACJ998

² 2010 (2) An.W.R. 20 (A.P.)

under the Act or under the terms and conditions of the policy and the Tribunal below has no jurisdiction to entertain the claim petitions filed by them and the appellant Insurance company is not liable to pay compensation to the claimants". Therefore, the law is well settled that the claimant has to prove that he is a third party and his interest is protected under Ex.B.1-policy, but he failed to do so. The material on record reveals that the risk of the claimant is not covered under Ex.B.1-policy, the claimant is not a third party and he is none other than the son of the owner of the offending vehicle/1st respondent. Therefore, the 2nd respondent cannot fasten the liability of the 1st respondent. It is for the 1st respondent alone to compensate the claimant for the loss sustained by him due to the accident. The Tribunal, by giving cogent reasons, came to the conclusion that the 2nd respondent/Insurance company is not liable to pay any compensation and the 1st respondent alone is liable to pay the compensation to the claimant. No appeal is filed by the 1st respondent against the said finding.

14. For the foregoing reasons, I do not find any legal flaw or infirmity in the finding given by the Tribunal in exonerating the 2nd respondent/Insurance company from payment of the compensation to the claimant and the order passed by the Tribunal is perfectly sustainable under law and it warrants no interference. The appeal is devoid of merits, therefore, it is liable to be dismissed.

15. Accordingly, the appeal is dismissed, while confirming the decree and order dated 21.03.2011 passed by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Madanapalle, in M.V.O.P.No.212 of 2009. No order as to costs.

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

21st July, 2023
cbs

V.GOPALA KRISHNA RAO, J

HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

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