THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No. 1368 of 2014

JUDGMENT:

Aggrieved by the order dated 29.12.2008 passed by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Rajahmundry, in M.V.O.P.No.79 of 2008, whereby the Tribunal awarded a sum of Rs.1,00,000/- towards compensation to the petitioner, the 2nd respondent/Insurance company preferred this instant appeal.

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 claim petitioner filed the petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents praying the Tribunal to award compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident that took place on 30.07.2007.

4. The brief averments in the petition filed by the petitioner are as follows:

On 30.07.2007 while the petitioner was travelling in a lorry bearing registration No.AP 5V 5777 as driver and at Tangi Police Station Jurisdiction on the high way No.5, one stray cow suddenly approached in front of the lorry, in order to save the cow, the petitioner swerved the vehicle to little left on the western side lane of the N.H.5, as a result, the lorry turned turtle and the petitioner sustained severe bleeding injuries. The 1st respondent is owner and the 2nd respondent is insurer of the offending lorry, hence, both the respondents are jointly and severally liable to pay compensation to the petitioner.

5. The respondents filed counters separately by denying the manner of accident. The 1st respondent pleaded that the petitioner himself is responsible for the accident, and since the offending lorry was validly insured with the 2nd respondent, the 2nd respondent is liable to pay compensation. It is pleaded by the 2nd

respondent/Insurance company that the driver of the offending lorry was not having valid and effective driving licence, the offending lorry was not insured with the Insurance company, therefore, the Insurance company is not liable to pay any compensation.

6. Based on the above pleadings of both the parties, the following issues were settled for trial by the Tribunal:

1) Whether the accident occurred due to the rash and negligent driving of driver of lorry bearing No.AP 5V 5777?
2) Whether the petitioner is entitled to receive compensation? If so, to what amount and from which of the respondents?
3) To what relief?

7. During the course of enquiry in the claim petition, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.6 were marked. On behalf of the respondents, no oral evidence was adduced, but Ex.B.1 was got 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 due to rash and negligent driving of the driver of the offending lorry and accordingly, allowed the claim petition and granted an amount of Rs.1,00,000/- towards compensation to the petitioner with costs and interest at 7.5% p.a. from the date of petition till the date of deposit against both the respondents. Aggrieved against the said order, the appellant/ Insurance company preferred the present appeal.

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

10. Now, the point for determination is:

Whether the order of the Tribunal needs any interference by this Court, if so, to what extent?

11. **POINT**: In order to establish the rash and negligent driving of the driver of the offending lorry, the petitioner got examined himself as P.W.1 and relied on Ex.A.1-attested copy of first information report. The evidence of P.W.1 goes to show that the accident

occurred due to rash and negligent driving of the driver of the offending lorry. To rebut the evidence of P.W.1, no oral evidence was adduced by the respondents before the Tribunal. Ex.A.1-first information report supports the evidence of P.W.1. On considering the evidence of P.W.1 and Ex.A.1, the Tribunal also came to the same conclusion. Therefore, there is no need to interfere with the said finding given by the Tribunal.

12. To prove the injuries sustained by him, expenditure incurred for treatment and the period of treatment, the petitioner got examined the doctor, who treated him, as P.W.2 and also relied on Ex.A.2-wound certificate, and Ex.A.4 & A.5-x-rays, Ex.A.5-prescriptions and medical bills to a tune of Rs.28,554/-. The material on record reveals that the petitioner sustained four fractures. On considering the material on record, the Tribunal awarded a sum of Rs.60,000/- for four fractures @ Rs.15,000/- for each fracture, Rs.6,000/- towards loss of income, Rs.10,000/- towards pain and suffering, and Rs.28,554/- towards medical expenses. Thus, in all

the Tribunal granted an amount of Rs.1,04,554/- towards compensation for the injuries sustained by him in the accident. Since the petitioner sought for compensation of Rs.1,00,000/- only in the claim petition, the Tribunal awarded said amount of Rs.1,00,000/- towards compensation to the petitioner. The compensation awarded by the Tribunal is just and reasonable, therefore, there is no need to interfere with the quantum of compensation.

13. The Tribunal in its order held that there is no dispute in respect of the fact that during the course of employment the petitioner sustained injuries while driving the offending lorry, which was owned by the 1st respondent and insured with the 2nd respondent/Insurance company under Ex.B.1-policy, the policy was in force as on the date of accident, the Insurance company collected Rs.100/- towards liability of owner, the driver of the offending lorry was having valid driving licence at the time of accident, therefore, both the respondents are jointly and severally liable to pay the compensation

to the petitioner. There is no legal flaw or infirmity in the said finding given by the Tribunal.

14. In view of the foregoing reasons, this Court finds that there is no illegality or irregularity in the order of the Tribunal and it is perfectly sustainable under law and it warrants no interference and 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 29.12.2008 passed by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Rajahmundry, in M.V.O.P.No.79 of 2008. No order as to costs.

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

_____

V.GOPALA KRISHNA RAO, J

August, 2023
cbs

HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No. 1368 of 2014

August, 2023

cbs