

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No.2655 of 2014

JUDGMENT:

Aggrieved by the impugned Order dated 04.08.2008, passed in M.V.O.P.No.91 of 2007 on the file of the Motor Accident Claims Tribunal -cum- Additional District Judge, Hindupur, whereby an amount of Rs.20,000/- was awarded against the 1st and 2nd respondents, this instant appeal is preferred by the claimant for enhancement of compensation.

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

3. This aforesaid M.V.O.P.No.91 of 2007 was preferred by the petitioner under Sections 140 and 166 of Motor Vehicles Act, 1988 (for short "the Act"), read with Rule 455 of Motor Vehicles Rules, 1989 claiming compensation of Rs.1,10,000/- on account of the injuries sustained by the

claim petitioner in a motor vehicle accident that occurred on 13.09.2004.

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

On 13.09.2004, at about 06.30 p.m. while the petitioner was travelling in a Tempo bearing No.TAG 2212 from Godanakunta to Amarapuram, when the Tempo reached near Anjaneyaswamy temple on Godanakunta – Amarapuram, Tank Bund road, the driver drove the Tempo in a rash and negligent manner and consequently, the Tempo turned turtle into a pit on the right side of the road and the petitioner and others fell down from the Tempo and received injuries. The petitioner was shifted to the private Hospital, Amarapuram and from there he was shifted to the Government Hospital, Madakasira for treatment and later, he was also treated by Dr. R.Balaji in Government Hospital, Hindupur. The petitioner received injuries on his left clavicle and other injuries all over the body. A case in Crime No.45 of 2004 was registered under

Section 337 and 338 of I.P.C., against the driver of the offending vehicle.

5. Respondent Nos.1 and 2 are remained *exparte*.

6. Respondent No.3 filed written statement denying claim of the claimants.

7. Based on the above pleadings of both the parties, the Tribunal framed the following issues for trial:-

1. *Whether the petitioner sustained injuries in the road accident on 13-09-2004 on account of Tempo bearing No.TAG 2212 as alleged in the petition?*
2. *Whether the petitioner is entitled for compensation if so to what amount and from which of the respondents?*
3. *To what relief?*

8. During the course of the enquiry, on behalf of the petitioner, PWs.1 and 2 were examined and got marked Exs.A1 to A5. On behalf of the respondent No.3, R.W.1 is examined and Ex.B1 to Ex.B3 are marked.

9. At the culmination of enquiry, on considering the entire material on record, the Tribunal awarded an amount of Rs.20,000/- towards compensation against the Respondent Nos.1 and 2, by exonerating the Insurance Company. Aggrieved thereby, the claimant filed this instant appeal questioning the legality of the order passed by the Tribunal.

10. Now the points for determination are:

1. *Whether the claimant is entitled for enhancement of compensation as prayed for?*
2. *Whether the order of the Tribunal needs any interference? If so, to what extent?*

POINTS:

11. The claim petitioner himself is examined as P.W.1. His evidence goes to show that on 13.09.2004, at about 06.30 p.m. when the Tempo bearing No.TAG 2212 (herein after referred to as “the offending vehicle”) reached near Anjaneyaswamy temple on Godanakunta – Amarapuram, the driver drove the Tempo in a rash and negligent manner, as a result of which, the Tempo turned turtle into a pit on the right side of the road and the

petitioner fell down along with their ten (10) Milk Cans from the Tempo and the petitioner sustained grievous injuries. The evidence of P.W.1 clearly goes to show that the petitioner is travelling in the offending vehicle as an owner of the goods i.e., Milk Cans.

12. The material on record reveals that the accident in question was occurred due to rash and negligent driving of the driver of the 1st respondent. Ex.A1 certified copy of the FIR and Ex.A3 certified copy of the charge sheet. After completion of investigation, the Investigating Officer laid charge sheet against the 1st respondent/driver of the offending vehicle. The Tribunal also came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. Therefore, I do not find any legal flaw or infirmity in the said finding given by the Tribunal. As seen from the material on record, the petitioner is aged about 20 years at the time of accident and he sustained one grievous injury in the said accident. Therefore, an amount of Rs.15,000/- was awarded towards one grievous injury. Since the

petitioner also sustained some disability and the evidence of P.W.2 also supports the case of petitioner and considering the evidence of P.W.2, Doctor who treated the petitioner and on considering the Ex.A4, an amount of Rs.3,000/- was awarded towards nutrition of food, attendant charges and transport expenses. An amount of Rs.2,000/- was awarded towards medical expenses. An amount of Rs.10,000/- is awarded towards disability sustained by the petitioner.

13. On considering the entire material on record, the Tribunal came to a conclusion that the petitioner is suffering with disability of 7.5%. As stated *supra*, the evidence of P.W.1 reveals that the petitioner was travelling in the offending vehicle/Tempo as an owner of the goods i.e., Milk Cans. As seen from the material on record, Ex.B1 policy N.F.P.P. (Non Fair Paid Passenger), an amount of Rs.75/- was collected by the Insurance Company towards N.F.P.P. (Non Fair Paid Passenger) and the Ex.B1 reveals the same and the policy is in force, the risk of injured is also covered under the policy. Therefore, by applying the

decision of the Apex Court in **Manuara Khatun and others Vs. Rajesh Kumar Singh and others**¹, since the offending vehicle is insured with Insurance Company and premium also collected for coverage of the policy, the 3rd respondent has to pay the total compensation of Rs.30,000/- with interest at the rate of 6% per annum within two (2) months to the claimant and later recover the same from the owner of the offending vehicle/2nd respondent by filing an execution petition and without filing any independent suit.

14. In the result, the appeal is partly allowed, by enhancing the quantum of compensation of Rs.20,000/- awarded by the Tribunal to Rs.30,000/- with interest at the rate of 6% per annum. The 3rd respondent/Insurance Company is directed to deposit the total compensation of Rs.30,000/- with interest as ordered above within two (2) months from the date of this judgment, later recover the same along with interest from the owner of the offending vehicle Tempo/2nd respondent by filing an execution petition and without filing any independent suit. On such

¹ (2017) 4 SCC 796

deposit, the appellant/ claimant is entitled to withdraw the same along with interest thereon.

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

JUSTICE V.GOPALA KRISHNA RAO

14.08.2023
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