

HONOURABLE SRI JUSTICE M. GANGA RAO

M.A.C.M.A.No.969 of 2008

JUDGMENT:

The appellant is the injured claimant filed this appeal against the award and decree dated 09.01.2008 passed in M.V.O.P.No.159 of 2006 by the Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Ongole, whereby the appellant was granted an amount of Rs.28,000/- towards 50% of the total compensation of Rs.56,000/- holding that the accident occurred due to the contributory negligence of the appellant.

2. The brief facts of the case are that on 14.12.2005 when the appellant was returning on his TVS Safari, after completing his work to Kandukuru on his way at 8 p.m. when he reached near Anandapuram road an auto bearing No.AP 27 V 9913 came from Kandukur side and driven in a rash and negligent manner with high speed without blowing horn by its driver and dashed against his right leg below the knee as a result the appellant sustained fracture of right leg below the knee and also received injury to his right forearm. The nature of the accident, the injuries sustained by the appellant, his hospitalization and received treatment in Vijaya Raghava Rao Hospital, Ongole are not in dispute. The total compensation of Rs.56,000/- arrived by the Tribunal could not be found fault with. In this appeal, the short question that falls for consideration of this Court is whether there is any contributory negligence on the part of the appellant in occurrence of the accident?

3. The Tribunal while answering to Issue No.1 whether the accident was occurred on 14.12.2005 at about 20.00 hours due to rash and negligent driving of the auto bearing No. AP 27 V 9913, has

taken into consideration of Ex.A1 FIR in Cr.No. 140 of 2005 registered by the Kandukur Town Police Station and Ex.A3 charge sheet filed for the offences under Sections 337 and 338 IPC against the driver of the offending vehicle auto and also Ex.A2 wound certificate reveals that the appellant received two simple injuries and got fractured his right leg just below the knee.

4. The Tribunal contrary to the evidence of PW.1 and the contents of Exs.A1 and A3 held that both the vehicles are small vehicles on the road, there could be plenty of space on the road, if PW.1, the injured-claimant is vigilant, he could have avoided the accident. If the accident took place on the middle of the road and when the vehicles were coming in the opposite direction it could be safely said that due to negligence of both the drivers of the vehicles, the accident occurred and it is not the case of the appellant that the driver of the auto came in the wrong side and dashed against his moped. The vehicle hit on his right leg and not to the moped, came to the conclusion that the accident took place due to contributory negligence of the drivers of both the vehicles. In that accident the appellant received injuries. The conclusion of the Tribunal that the accident occurred due to the contributory negligence of the driver of the offending auto and negligence of the appellant is contrary to the evidence on record.

5. The Tribunal has not considered the contents of Ex.A1 copy of FIR in Cr.No.140 of 2005 registered against the driver of the offending vehicle by the Kandukur Town Police Station and Ex.A3 attested copy of the charge sheet, the contents of which clearly shows that the accident occurred due to the negligence of the driver of the offending auto. The Tribunal on mere surmises and conjunctions without

therebeing any legal evidence adduced by the owner of the vehicle and insurance company, held that the accident was occurred, due to the negligence of both the drivers, if they are vigilant the accident could have been avoided which is not supported by any legal evidence on record. Even RW.1, Insurance Company witness, had not spoken about any contributory negligence on the part of appellant in causing the accident. Hence the issue could be answered safely in favour of the appellant. Accordingly, this Court came to the conclusion that there is no contributory negligence on the part of appellant in causing the accident and the appellant is entitled for full compensation of Rs.56,000/- with 7.5% interest as held by the Tribunal. The respondents are jointly and severally liable to pay compensation to the appellant. The respondents No.1 and 2 are directed to deposit the compensation amount within a period of two months from the date of receipt of a copy of this order.

6. For the reasons stated above, the order of the Tribunal is modified as indicated above.

Accordingly, the appeal is partly allowed. No order as to costs.

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

JUSTICE M. GANGA RAO

Dated 7th March, 2019.
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