

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1151 of 2009

ORDER:

This appeal is filed under Section 173 of the Motor Vehicles Act by the second respondent—Insurance Company, challenging the judgment and award dated 28.1.2008 passed in M.A.T.O.P. No.244 of 2005 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-V Additional District Judge, (Fast Track Court), Kothagudem.

2. The parties hereinafter will be referred as they are arrayed before the Tribunal, for the sake of convenience.

3. The facts of the case leading to filing of the present appeal are, briefly, as follows: On 18.3.2004, the owner of the lorry bearing No.AP 20U 1863 engaged the petitioner and others as coolies for loading and unloading of sand. After loading the sand into the lorry, petitioner and others were proceeding on the lorry towards Manuguru for unloading the sand. When the lorry reached Gopalraopet, driver of the lorry had driven the same in a rash and negligent manner due to which the lorry turned turtle. The Station House Officer, Yedullabayyaram Police Station registered a case in crime No.16 of 2004 under Sections 337 and 338 IPC against the driver of the lorry. In the accident, the petitioner sustained grievous injuries on various parts of the body and took treatment for a long time. The petitioner spent Rs.15,000/- towards medicines and treatment. Due to the injuries, the petitioner could not attend work for a long time and thereby lost her income. The lorry, which belongs to the first respondent, was insured with the second respondent with effect from 23.5.2003 to 22.5.2004 and therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,00,000/- to the petitioner with interest and costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying the averments made in the petition, *inter alia*, contending that by the time of the accident, the petitioner was travelling as unauthorized passenger in the lorry and therefore, this respondent is not liable to pay compensation, if any, to the petitioner. It is the duty of the petitioner to prove that the driver of the lorry was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner is highly

excessive and exorbitant. Hence the petition is liable to be dismissed so far as this respondent is concerned.

6. Basing on the above pleadings, the Tribunal framed the following issues:

- (1) Whether the accident took place due to the rash and negligent driving of the driver of the crime lorry bearing No.AP 20U 1863?
- (2) Whether the petitioner is entitled to any compensation? If so, to what amount and from whom?
- (3) To what relief?

7. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A4 and X1 were marked. On behalf of the respondent, R.W.1 was examined and Ex.B1 was marked.

8. On appraising the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of driver of the lorry, which resulted in injuries to the petitioner, and allowed the petition in part by awarding a compensation of Rs.20,000/-, directing the respondent Nos.1 and 2 to pay the same jointly and severally with interest at 7.5% per annum from the date of petition till the date of payment. Feeling aggrieved by the judgment and award of the Tribunal, second respondent—insurance company preferred the present appeal.

9. Heard the learned counsel for both the parties.

10. The contention of learned counsel for the second respondent is that the Tribunal wrongly fastened the liability on the second respondent even though Ex.B1 policy does not cover the risk of unauthorized passengers or coolies. He further submitted that the amount of compensation awarded by the Tribunal is on higher side. **Per contra**, learned counsel for the claimant submitted that the first respondent had not violated the terms and conditions of the policy and therefore, the Tribunal rightly fastened the liability on the second respondent.

11. Now, the points that arise for determination in this appeal are:

1. Whether the Tribunal has awarded just and reasonable compensation or not?
2. Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent?

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Point No.1:

12. As per the finding of the Tribunal, on issue No.1, the accident occurred due to the rash and negligent driving of driver of the lorry, which resulted in injuries to the petitioner. The second respondent is not seriously disputing the finding of the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of driver of the lorry, which resulted in injuries to the petitioner.

13. As per the testimony of P.W.1, he sustained injuries on various parts of the body. A perusal of Ex.A3 medical certificate reveals that the petitioner sustained one injury on shoulder and fracture of scapula. Taking into consideration the nature of the injuries sustained by the petitioner, the Tribunal rightly awarded an amount of Rs.15,000/- towards pain and suffering. Basing on the evidence of P.W.2, the Tribunal rightly awarded an amount of Rs.2,000/- towards medicines and traveling expenses. Due to the injuries, the petitioner might not have attended to her work for a period of about 15 days. Taking into consideration the nature of the injuries sustained by the petitioner, the Tribunal rightly awarded an amount of Rs.3,000/- towards loss of earning. In total, the Tribunal awarded an amount of Rs.20,000/- to the petitioner towards compensation. The petitioner has not filed appeal or cross-objections challenging the quantum of compensation.

14. Having regard to the facts and circumstances of the case, this court is of the considered view that an amount of Rs.20,000/- awarded by the Tribunal to the petitioner towards compensation is just and reasonable to meet the ends of justice. Accordingly, the point is answered.

Point No.2:

15. The oral testimony of P.W.1 coupled with Ex.B1 clearly reveals that the crime vehicle was insured with the second respondent under Ex.B1 policy, which was in force as on the date of the accident. The oral testimony of R.W.1 is that the petitioner was travelling in the crime vehicle as unauthorized passenger. Except the self-served testimony of R.W.1, there is no other convincing evidence that the petitioner was travelling in the lorry as an unauthorized passenger. As per the recitals of Exs.A1 F.I.R., and A2 charge sheet, by the time of the accident, the petitioner was

travelling in the lorry as a coolie for loading and unloading of sand. In view of the recitals of Exs.A1 and A2, the contention of the second respondent that by the time of the accident, the petitioner was travelling in the lorry as unauthorized passenger is not sustainable. Ex.B1 is a comprehensive policy and it covers the risk of '6' coolies. In view of the recitals of Ex.B1, the second respondent has to indemnify the liability of the first respondent. The first respondent had not violated the terms and conditions of the policy so as to absolve the liability of the second respondent. There are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. Accordingly, the point is answered against the second respondent.

16. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions if any pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

April 22, 2015.

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