

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.1616 of 2011

JUDGMENT:

1 Aggrieved by the judgment and award dated 12.12.2005 passed in M.V.O.P.No.48 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District & Sessions Judge, Vizianagaram wherein and whereby an amount of Rs.55,500/- was awarded as compensation to the claimant, the insurance company filed the present appeal.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 28.11.2002 the petitioner along with others was travelling in the lorry bearing No.AIV 2489 as a labourer for loading and unloading of sand. At that time, the first respondent was driving the said lorry and when the lorry reached near Chintala Cheruvu Gedda, the first respondent drove the same in a rash and negligent manner, due to which, the lorry turned turtle. The accident occurred due to the rash and negligent driving of the first respondent. In connection with the said accident, the Station House Officer, Denkada Police Station registered a case in Cr.No.132 of 2002 against the first respondent for the offences punishable under Sections 337 and 338 of IPC. In the said accident, the petitioner sustained multiple grievous injuries all over the body and took treatment as inpatient in Government hospital, Vizianagaram. The petitioner spent huge amount towards medicines and treatment. By the date of accident, the petitioner was hale and healthy and was earning Rs.100/- per day by attending cooli work. Due to the injuries, the petitioner could not

attend his work for a long time and thereby lost his income. The petitioner sustained disability also due to the injuries sustained by him in the accident. Therefore, the petitioner filed the petition claiming compensation of Rs.1,50,000/- from the respondents. By the date of accident, the lorry bearing No.AIV 2489 was insured with the second respondent and hence the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

5 First respondent filed counter denying the material averments inter alia contending that in order to avoid a major accident, he severed the vehicle to left side and in that process the petitioner sustained injuries. He was having valid and effective driving licence to drive the vehicle at the time of accident. The crime vehicle was insured with the second respondent with effect from 08.11.2002 to 07.11.2003 and hence the second respondent alone is liable to pay compensation to the petitioner. He further submitted that at the time of accident, the petitioner was working as labourer in the said lorry for loading and unloading purpose.

6 The second respondent filed counter denying the material averments inter alia contending that the first respondent did not inform to the second respondent about the factum of accident. The petitioner travelled in the crime vehicle as an unauthorised passenger but not as a labourer and thereby the first respondent violated the terms and conditions of the policy. The petitioner does not come within the definition of labourer. Therefore, first respondent alone is liable to pay compensation, if any, to the petitioner. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

7 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident occurred due to the rash and negligent driving by the driver of lorry bearing No.AIV 2489?
- ii. Whether the petitioner is entitled for any compensation?
- iii. Whether the respondents are liable to pay any compensation?
- iv. To what relief?

8 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.7 and Exs.X.1 and X.2 were marked. On behalf of the second respondent R.W.1 was examined and Ex.B.1 was marked.

9 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AIV 2489 i.e. first respondent and allowed the petition in part by awarding compensation of Rs.55,000/- with interest at 7.5% p.a from the date of filing of the petition till the date of realisation and directed the respondent Nos.1 and 2 to deposit the amount of compensation jointly and severally. Feeling aggrieved by the said finding of the Tribunal in fastening the liability on it, the second respondent – insurance company filed the present appeal.

10 The contention of Sri K.Sitaram, the learned counsel for the appellant / second respondent is that the Tribunal committed error in fastening liability on the second respondent. He further submitted that by the time of accident, the petitioner was travelling in the lorry as an unauthorised passenger and hence the second respondent is not liable to pay compensation to the petitioner and the same was not considered by the Tribunal in right perspective.

11 *Per contra*, Sri Taddi Nageswara Rao the learned counsel for the petitioner submitted that the Tribunal has rightly considered the

oral and documentary evidence available on record and arrived at a conclusion that by the time of accident, the petitioner was travelling in the lorry as a labourer. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

12 Now the point that falls for consideration in this appeal is:

“Whether the Tribunal committed any error in fastening the liability on the second respondent – insurance company”

Point:

13 The oral testimony of P.W.1 coupled with Exs.A.1 and A.2 clearly reveals that the accident occurred due to the rash and negligent driving of the first respondent. In the cross-examination of P.W.1, nothing is elicited to shake his testimony so far as the manner of accident is considered. The respondents have not adduced any evidence to demolish the stand taken by the petitioner. The oral testimony of P.W.1 is fully supported by the recitals of Exs.A.1 and A.2. After considering the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the first respondent. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, this Court is of the considered view that the accident occurred due to the rash and negligent driving of the first respondent.

14 The Tribunal awarded an amount of Rs.55,500/- as compensation to the petitioner. The petitioner did not file appeal or cross objections challenging the quantum of compensation awarded by the Tribunal. The second respondent, in all fairness, also is not disputing the quantum of compensation awarded by the Tribunal. Having regard to the facts and circumstances of the case, I am of the

considered view that the Tribunal awarded just and reasonable compensation to the petitioner.

15 As per the testimony of P.W.1, at the time of accident, he was travelling in the lorry as a labourer. As per the testimony of R.W.1 at the time of accident, the petitioner was travelling in the lorry as an unauthorised passenger. The crucial question to be determined at this juncture is whether the petitioner was travelling in the offending lorry as labourer or as an unauthorised person?

16 The first respondent filed counter admitting that at the time of accident, the petitioner was travelling in the lorry as a labourer for loading and unloading of sand. As per the recitals of Exs.A.1 and A.2, at the time of accident the petitioner was travelling in the lorry as a labourer. In Para No.11 of the judgment under appeal also the Tribunal made an observation that by the time of accident, the petitioner was travelling in the offending lorry as a labourer for loading and unloading purpose.

17 I have carefully perused the Ex.B.1 policy, as per which, the first respondent paid an amount of Rs.100/- covering the risk of owner and driver. The insured also paid an amount of Rs.50/- covering the risk of two workmen under the Workmen Compensation Act, 1923. Therefore, Ex.B.1 covers the risk of labourers or workmen.

18 As observed earlier, the petitioner was travelling as a labourer for loading and unloading of sand. Therefore, he will certainly fall within the definition of workman as defined under the Workmen's Compensation Act. Ex.B.1 policy covers the risk of two workmen. The first respondent has not violated the terms and conditions of the policy so as to absolve the liability of the second respondent – insurance company. In view of the recitals of Ex.B.1

policy, the second respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

19 The Tribunal has considered various case laws submitted by both parties and arrived at a conclusion that by the time of accident, the petitioner was travelling in the lorry as a labourer and Ex.B.1 policy covers the risk of the petitioner. The finding recorded by the Tribunal is fully supported by oral and documentary evidence and also the recitals of Ex.B.1 policy. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal. The appeal lacks merits and bonafides.

20 In the result, the appeal is dismissed. Parties are directed to bear their own costs in this appeal. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 4th March, 2015.

Kvsn