

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.727 OF 2009

JUDGMENT:

1 _____ Aggrieved by the judgment and award dated 25.09.2006 passed in M.V.O.P.No.360 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Court, Kurnool, the insurer 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 _____ The petitioner / claimant filed the MVOP No.360 of 2005 claiming compensation of Rs.50,000/- for the injuries sustained by him in an accident that occurred on 23.03.2004 at 8.30 a.m near Devanur village of Kurnool District. As per the case of the petitioner, on the date of accident, the petitioner along with others was engaged as cooli by the first respondent who is the owner of the tractor and trailer bearing registration No.AP 21-V-5963 and AP 21-V-5964 (hereinafter referred to as 'the crime vehicle'). When the crime vehicle reached near Devanur village, the driver of the crime vehicle drove it in a rash and negligent manner, due to which the crime vehicle turned turtle and fell in a ditch. In the said accident the petitioner and others sustained multiple injuries. The petitioner took treatment as inpatient in Government Hospital, Nandikotkur. As on the date of accident, the crime vehicle was insured with the second respondent, the respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioner.

5 _____ First respondent (owner of the crime vehicle) remained *ex parte*. Second respondent-appellant filed counter denying the material averments made in the claim petition inter *alia* contending that there

was no negligence on the part of the driver of the crime vehicle. It is further contended that the amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident dated 23.03.2004 took place near Devanur at about 8.30 hours was due to rash and negligent driving of the tractor – trailer bearing No.AP 21 V 5963 & 5964?
- ii. Whether the respondents are liable to pay the compensation claimed? If not (sic. if so) what amount they are liable to pay to the petitioner, by virtue of the said accident?
- iii. To what relief?

7 The Tribunal clubbed O.P.Nos.358, 360, 361, 362, 363 and 364 of 2005 and recorded common evidence in all the O.Ps. During the course of trial, on behalf of all the petitioners, P.Ws.1 to 6 were examined and Exs.A.1 to A.11 were marked. On behalf of the second respondent-appellant no oral evidence was adduced, but copy of the insurance policy was marked as Ex.B.1.

8 Having appreciated 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 crime vehicle and awarded compensation of Rs.12,000/- to the petitioner. Aggrieved by granting of the said amount of compensation, the insurance company filed the present appeal.

9 Now the point for consideration in this appeal is whether the judgment and award passed by the Tribunal is legally sustainable or not?

10 Mr. Dilip Naik representing Mrs.S.N.Padmini, the learned counsel for the appellant-insurance company submitted that at the time of accident the petitioner was travelling in the crime vehicle as an

unauthorised passenger. He further submitted that as on the date of accident, the driver of the crime vehicle was not having valid and effective driving licence.

11 Per contra, the learned counsel for the petitioner / claimant submitted that Ex.B.1 policy covers the risk of coolies. He further submitted that absolutely there is no material on record to prove that the driver of the crime vehicle was not having valid and effective driving licence as on the date of accident.

12 As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. The appellant has not pleaded either before the Tribunal or in the grounds of appeal that there was no rashness or negligence on the part of the driver of the crime vehicle.

13 The oral testimony of P.Ws.1 to 6 coupled with Ex.A.1-FIR and Ex.A.3 -charge sheet clearly reveals that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. In the cross-examination of P.Ws.1 to 6, who are claimants, nothing is elicited to shake their testimony. The oral testimony of P.Ws.1 to 6 is supported by the recitals of Ex.A.1 FIR and Ex.A.3 charge sheet so far as the accident is concerned. Basing on the material available on record, I am of the considered view that the accident occurred only due to the rash and negligent driving of the crime vehicle by its driver and I am fully agreeing with the finding of the Tribunal on issue No.1.

14 The predominant contention of the learned counsel for the appellant – insurance company is that at the time of accident the petitioner and other were travelling in the crime vehicle as unauthorised persons. As seen from the testimony of P.Ws.1 to 6, on the date of accident, the first respondent engaged them as coolies. Their testimony further reveals that at the time of accident, they were proceeding to the field for attending cooli work. The fact remains that

the accident occurred when the petitioner and others were proceedings in the crime vehicle for attending the cooli work.

15 As per the testimony of R.W.1, the petitioners are not entitled to travel in the tractor and trailer. In the cross-examination R.W.1 in unequivocal terms stated that the coolies are required for loading and unloading purpose. The oral testimony of R.W.1 coupled with Ex.B.1 clearly reveals that the insurance policy was in force as on the date of accident. It is not out of place to extract hereunder the relevant portion of Rule 39-A of India Motor Tariff (IMT), which reads as follows:

“In considerations of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything to the contrary contained herein the company shall indemnify the insured against his legal liability under the Workmen’s Compensation Act, 1923 and subsequent amendments to that Act prior to the date of this Endorsement in respect of death of or bodily injury to any person (other than the paid driver) exceeding six in number whilst being carried in the Motor vehicle and will in addition be responsible for all costs and expenses incurred with its written consent.”

16 From the above provision, it is clear that the coolies are entitled to travel in the vehicle in question. At the time of accident six persons (along with the petitioner) were travelling in the crime vehicle. There is no pleading in the written statement filed by the appellant – insurance company or in the grounds of appeal that at the time of accident the petitioner along with others was travelling in the crime vehicle as gratuitous passengers. The material available on record clinchingly establishes that at the time of accident the petitioner and others were travelling in the crime vehicle as coolies. Admittedly, Ex.B.1 policy covers the risk of six coolies. Absolutely there is no material on record to establish that the first respondent-owner of the vehicle had violated the terms and conditions of the policy so as to absolve the liability of the appellant - insurance company. Basing on the material available on record, the Tribunal arrived at a conclusion that the first respondent had not violated the terms and conditions of the Ex.B.1 policy. I am fully agreeing with the finding recorded by the Tribunal on this issue also. Therefore, the first respondent has to

indemnify the liability of the second respondent. Viewed from any angle, the appeal is not maintainable. There is no much dispute with regard to the quantum of compensation awarded by the Tribunal.

17 For the foregoing discussion, I see no grounds much less valid grounds to interfere with the findings recorded by the Tribunal. Hence the appeal is dismissed. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed. No order as to costs.

T.SUNIL CHOWDARY, J.

January 27, 2015.

Kvsn