

IN THE HIGH COURT OF JUDICATURE, AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA
PRADESH

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

M.A C.M.A. No. 464 of 2013

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Between:

The New India Assurance Company Limited represented by its Branch
Manager, Prakasam Bazaar, Nalgonda

....Appellant/2nd respondent

A n d

Gundu Linga Swamy S/o Dhasharadha and one another

....Respondents

DATE OF JUDGMENT: 30.12.2015

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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

M.A C.M.A. No. 464 of 2013

J U D G M E N T

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This appeal is filed by the appellant-Insurance Company/respondent No.2, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award and decree Dated 27.10.2005 passed by the Chairman, Motor Accident Claims Tribunal –cum- III Additional District Judge, IFTC, Nalgonda, in O.P.No.488 of 2002, awarding compensation of Rs. 14,000/-.

2. The first respondent herein is the claimant filed the above O.P. under Section 166 of the Act, claiming compensation of Rs. 50,000/- for the injuries sustained by him in a motor vehicle accident. This appeal was dismissed for default as against second respondent vide Court order dated 6.9.2011.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 1.9.2001 while the petitioner along with some other villagers was going from Gollagudem H/o Surveil Village to Godavari river in the lorry bearing No. ADT-3597, with Vinayaka Idol for immersion and on the way at 9.00 a.m,

when it reached near Venkatramaiah Mango Garden, after crossing the Garla Oddu Village, the driver of the lorry drove it in a rash and negligent manner at high speed and dashed to another lorry bearing No. AP-36-U-5555, which was coming in an opposite direction, with a load of coal, due to which the petitioner and others who were travelling in the lorry sustained grievous injuries. Immediately the petitioner was shifted to Government Hospital, Kothagudem, where he took treatment as inpatient and thereafter, taken treatment privately. On a complaint, a case in Cr.No. 68 of 2001 was registered against the driver of the lorry by Enkur Police. Prior to the accident the petitioner was hale and healthy and due to accident the petitioner has sustained fracture of both hands and thereby he was put to irreparable loss as he was forced to discontinue his studies and hence he claimed a sum of Rs. 50,000/- towards compensation with costs and interest.

5. The first respondent-owner of the crime vehicle remained *ex parte* and the appellant herein, who is the Insurance Company, filed counter denying the averments in the plaint itself stating that the appellant is not liable to pay compensation since the first respondent is not expected to travel in the lorry, which is a goods vehicle, as such the first respondent is an unauthorized passenger and against the policy conditions and requested for dismissal of OP.

6. The Tribunal after considering the evidence of PWs-1 to 5 and Exs A1 to A12 and RW-1 and Ex.B1 granted an amount of Rs. 14,000/- payable by the second respondent, however, directed the appellant herein-second respondent to deposit the said compensation amount and recover the same from the first respondent, who is the owner of the vehicle.

7. The learned counsel appearing for the appellant-Insurance Company submits that since the first respondent –claimant is an unauthorized passenger travelling in the goods vehicle, the Insurance Company is not liable to pay the compensation but however, the Tribunal observed that the appellant-Insurance Company to deposit the compensation amount and then recover the same from the second respondent herein, which is erroneous.

8. Admittedly, as per the claim petition, the first respondent was travelling in the goods vehicle along with Vinayaka idol for immersion. As per the Judgment of the Supreme Court in ***New India Assurance Company Limited Vs. Asha Rani***^[1], the appellant-Insurance Company is not liable to pay compensation in respect of unauthorized passenger travelling in a goods vehicle. In view of the same, the appeal is liable to be allowed.

9. Accordingly, the direction of the Tribunal directing the

appellant-Insurance Company to deposit the compensation and recover the same from the second respondent is set aside.

10. To the extent indicated above MACMA is allowed in part. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

A. RAJASHEKER

REDDY, J

Date: 30.12.2015

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