

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.No.186 of 2013

JUDGMENT:

This appeal is filed by the petitioner - claimant under Section 173 of Motor Vehicles Act challenging the judgment and award, dated 16.11.2012 passed in M.V.O.P.No.794 of 2010 on the file of the V Additional District Judge-cum-Motor Accidents Claims Tribunal (Fast Track Court), Rajahmundry, East Godavari District.

2. For the sake of convenience, the parties are hereinafter be referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal, in brief, are as follows:

On 27.08.2009 at about 3.30 p.m., the petitioner along with others was proceeding in the goods auto bearing No.AP-5W-6932 for unloading of coconuts. When the auto crossed the Velicheru village bridge, the first respondent (driver of the auto) had driven the auto in a rash and negligent manner and applied sudden break, as a result, the auto turned turtle. The accident occurred due to the rash and negligent driving of the driver of the goods auto, against whom the Station House Officer, Athreyapuram Police Station, registered a case in Crime No.68/2009 under Sections 337 and 338 IPC. Due to accident, the petitioner sustained injuries on various parts of the body and took treatment as inpatient for long time. By the time of accident, the petitioner was aged about 39 years. On the date of accident, he was engaged as a jattu coolie by one Rayapureddi Suryanarayana, who has been carrying on coconut business. On the date of accident, the said Rayapureddy Suryanarayana engaged the auto bearing No.AP 5W 6932 for transportation of coconuts to different places. Hence, the petition is filed under Section 166 of Motor

Vehicles Act claiming compensation of Rs.4,00,000/-.

4. Respondents 1 and 2 remained *ex parte*. The third respondent filed counter denying all the averments made in the petition including the manner of the accident, age and income of the petitioner *inter alia* contending that there was no rashness or negligence on the part of the first respondent to cause the accident. The second respondent had violated the terms and conditions of policy and permit conditions. Therefore, this respondent is not liable to indemnify the liability of the second respondent. The amount of compensation claimed is on higher side. Hence the petition may be dismissed.

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

1. Whether the accident occurred due to rash and negligent driving of the goods auto bearing No.AP 5W 6932 by the 1st respondent?
2. Whether the petitioner is entitled for compensation, if so, to what amount and against which of the respondents?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.5 and Exs.X1 and X2 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B1, X3 and X4 were marked.

7. On appraising the oral and 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 goods auto bearing No.AP-5W-6932 and allowed the petition in part by awarding compensation of Rs.2,25,000/- with interest at the rate of 6% per annum from the date of petition till the

date of realisation.

8. Feeling aggrieved by the judgment and award passed by the Tribunal, the claimant preferred the present appeal.

9. The contention of the learned counsel for the appellant is three fold:

1. The finding of the Tribunal that by the time of accident, the petitioner was working as an employee of one Rayapureddy Suryanarayana of Velicheru village is not sustainable on facts.
2. The Tribunal failed to consider that Ex.B1 policy covers the risk of one employee, therefore, the third respondent has to indemnify the liability of the second respondent.
3. The findings recorded by the Tribunal are not sustainable either on facts or on law.

10. Per contra, the finding of the Tribunal that by the time of accident, the petitioner was working as an employee of Rayapureddi Suryanarayana is supported by oral and documentary evidence. He further submitted that Ex.B1 policy does not cover the risk of employees engaged by the owner of the goods (Rayapureddi Suryanarayana). He further submitted that there are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal.

11. Basing on the rival contentions, the point that arises for consideration in this appeal is as follows:

Whether Ex.B1 policy covers the risk of the petitioner or not?

12. **POINT:** As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the goods auto bearing No.AP 5W 6932 by its driver. The finding of the

Tribunal on issue No.1 became final in view of non-filing of appeal or cross-objections by respondents 1 to 3. Having regard to the facts and circumstances of the case, I am of the considered opinion that the accident occurred due to the rash and negligent driving of the driver of the goods auto, i.e., R1. The petitioner's counsel or the third respondent is not disputing the quantum of compensation awarded by the Tribunal. To substantiate his argument, learned counsel for the petitioner has drawn my attention to the following decisions:

1. 2008(1) ALD 723 Para-14

2. 2013(1) ALT 165

13. As per the principle enunciated in the cases cited supra, the coolie who was engaged for loading and unloading the goods is entitled to claim compensation from the insured and insurer. As seen from the oral testimony of R.W.1, the goods vehicle bearing No.AP 5W 6932 was insured with the third respondent's company under Ex.B1 policy. A perusal of Ex.B1 policy was in force with effect from 11.07.2009 to 10.07.2010. Ex.B1 policy was in force as on the date of accident. A perusal of Ex.B1 policy reveals that the second respondent paid an amount of Rs.25,000/- in respect of an employee engaged by the insured. The terms and conditions of Ex.B1 policy covers the risk of an employee engaged by the second respondent. The entire controversy refers around whether the petitioner was engaged as a coolie on the goods vehicle as on the date of accident by the second respondent or not? In order to appreciate the contention of the petitioner, it is not out of place to extract hereunder the relevant portion of the claim petition para 1

"The petitioner is aged about 39 years and he was hale and healthy prior to the date of accident. He has been working as a Jattu coolie under one Rayapureddi Suryanarayana of Velicheru village who conduct coconut business and used to engage goods Auto bearing No.AP5W 6932 regularly and transport the coconuts to different places and also carry Jattu coolies for loading and

unloading and petitioner is loading and unloading coolie on the goods auto bearing No.AP5W 6932.”

14. A perusal of above para clearly demonstrates on the date of accident, one Rayapureddi Suryanarayana engaged the petitioner for the purpose of loading and unloading of coconuts. A perusal of the petition clearly reveals on the date of accident, Rayapureddi Suryanarayana engaged the goods vehicle bearing No.AP 5W 6932, which belongs to the first respondent for the purpose of transportation of coconuts to different places. In the chief examination affidavit, the petitioner has taken a plea that on the date of accident, he was engaged as an employee by the second respondent. It is not out of place to extract hereunder the relevant portion of the cross-examination of P.W.1:

“It is not mentioned in my chief affidavit the name of my employee.”

15. The petitioner has given different versions in his examination with regard to the name of his employer. The first petitioner introduced new version in the chief examination, i.e., he is an employee of the second respondent. Any amount of oral evidence without a pleading is of no avail. It is an admitted fact the petitioner has not taken a specific plea in the claim petition that on the date of accident he was engaged as an employee. The specific case of the petitioner is that on the date of accident, he was engaged by one Rayapureddi Suryanarayana for the purpose of loading and unloading of coconuts in the goods auto bearing No.AP 5W 6932. The possibility of changing of version in the chief examination by the petitioner with an intention to claim compensation from the third respondent cannot be ruled out. Basing on the facts pleaded and proved, the irresistible conclusion that can be drawn is on the date of accident, the petitioner was engaged as a coolie for the purpose of loading and unloading of coconuts in the goods auto bearing No.AP

5W 6932 by Rayapureddi Suryanarayana. The fact remains on the date of accident, Rayapureddi Suryanarayana engaged the goods auto bearing No.AP 5W 6932 for the purpose of transportation of coconuts from one place to another. The material placed before the Tribunal falls short to establish on the date of accident, the petitioner was engaged by the second respondent for the purpose of loading and unloading of coconuts. The petitioner was not engaged by the second respondent on the date of accident. Therefore, he is not entitled to claim compensation from the third respondent. Simply because Ex.B1 policy covers the risk of employee engaged by the insured that itself is not a valid ground to fasten the liability on the insurance company. The Tribunal has considered the oral and documentary evidence in right perspective and arrived at a conclusion that on the date of accident, the petitioner was engaged as an employee by Rayapureddi Suryanarayana. The finding recorded by the Tribunal is supported by oral and documentary evidence available on record. There is no employer and employee relationship between the petitioner and the second respondent. There are no grounds much less valid grounds to interfere with the finding recorded by the Tribunal. Hence, the appeal is liable to be dismissed.

16. In the result, M.A.C.M.A. is dismissed. No costs. Consequently, miscellaneous petitions pending if any in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

06th October 2015

Rns

