HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

MACMA No. 336 of 2006

Judgment:

This appeal is filed challenging the judgment and award dated 11.03.2002 passed in OP No. 112 of 1999 on the file of the Motor Accident Claims Tribunal-cum-Additional District Judge, Hindupur.

2. The parties will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows. That on 09.07.1999 at the request of the first respondent, the petitioner went to Bangalore to settle the dispute with regard to hire charges of the lorry bearing registration No.ATA/868 which belongs to the first respondent. After settling the dispute, the petitioner boarded the same lorry to go to Penukonda from Bangalore on 10.07.1999. When the lorry reached near Kothakota the 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, Bagepalli Police Station, registered a case against the driver of the lorry in Crime No.110 of 1999 for the offences punishable under Sections 337 and 338 IPC. Due to the accident, the petitioner sustained grievous injuries on various parts of his body and took treatment as an inpatient for long time. By the time of accident, the petitioner was aged about 46 years and used to earn Rs.4,000/-

per month as an advocate. The petitioner filed the claim petition claiming compensation of Rs.2,90,000/. The lorry bearing No. ATA/868 which belongs to the first respondent was insured with the second respondent – Insurance Company as on the date of accident, therefore respondents 1 and 2 are jointly and severally liable to pay compensation to him.

4. The first respondent remained *ex parte*. The second respondent – Insurance Company filed counter denying all the averments made in the petition, *inter alia*, contending that there was no rashness or negligence on the part of the driver of the lorry to cause the accident. At the time of accident the petitioner was traveling in the lorry as gratuitous passenger thereby the first respondent violated the terms and conditions of the policy. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant and therefore the petition may be dismissed.

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

1. Whether the injuries to the petitioner are the resultant of the accident due to rash and negligent driving of the vehicle bearing Registration No.ATA-868, as alleged in the petition?
2. Whether the petitioner is entitled to the compensation amount and if so, to what amount and from which of the respondents?
3. To what relief?

6. During the course of trial, on behalf of the petitioner PWs.1 to 3 were examined and Exs.A1 to A9 and Exs.X1 to X3 were marked. On behalf of the respondents none were examined

and no documents were marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the lorry which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.1,07,988/-. Feeling aggrieved by the judgment and award of the Tribunal, the claimant preferred the present appeal.

8. Heard Sri M. Subba Reddy, learned counsel for the claimant, Sri R.N. Hemendranath Reddy, learned counsel for respondent No.1 and AVKS Prasad, learned counsel for respondent No.2.

9. The contention of the learned counsel for the claimant is that Ex.X1 insurance policy covers the risk of the petitioner and the same is not considered by the Tribunal. The Tribunal has not awarded just and reasonable compensation. He further submitted that the Tribunal erred in dismissing the petition against the second respondent.

10. *Per contra*, learned counsel for the second respondent – Insurance Company submitted that at the time of accident the petitioner was traveling in the lorry as gratuitous passenger, therefore the Insurance Company is not liable to pay compensation to the petitioner. He further submitted that the Tribunal has awarded just and reasonable compensation to the petitioner.

11. The points that arise for consideration in this appeal are; (1) whether the Tribunal awarded just and reasonable compensation? and (2) whether the first respondent had violated the terms and conditions of the policy or not?

12. **Point No.1**: As per the finding of the Tribunal, the accident occurred due to rash and negligent driving of the driver of the lorry. Neither the first respondent nor the second respondent preferred any appeal challenging the finding recorded by the Tribunal on issue No.1. The finding of the Tribunal on issue No.1 with regard to manner of accident became final.

13. Learned counsel for the petitioner submitted that the Tribunal has not awarded any amount for future treatment of the petitioner. I have carefully perused the material available on record. The petitioner did not choose to file any document to establish that he has to undergo another operation for removal of K8 wire. In the absence of documentary or other convincing evidence it is not safe to place reliance on the oral testimony of PW.1 who is an interested witness. The Tribunal has considered this aspect and disbelieved the version of the petitioner. There are no grounds much less valid grounds to interfere with the finding recorded by the Tribunal on this aspect.

14. The Tribunal has considered oral and documentary evidence as well as the medical bills produced before it and awarded compensation under the following heads.

a) Medical expenses	Rs. 30,213-00
b) Hospital Charges	Rs. 14,575-00
c) Post-operation & medicines	Rs. 15,500-00

d) Towards injuries	Rs. 41,500-00
e) Attendant charges	Rs. 1,200-00
f) Transport charges	Rs. 5,000-00
	Rs.1,07,988-00

A perusal of the above table clearly reveals that the Tribunal has taken into consideration each and every aspect and awarded just and reasonable compensation. In the light of the foregoing discussion the contention of the learned counsel for the petitioner that the Tribunal has not awarded just and reasonable compensation to the petitioner has no legs to stand.

15. **Point No.2**: The predominant contention of the learned counsel for the petitioner is that on the date of accident, the petitioner went to Bangalore to settle the hire charges in respect of the crime vehicle. To substantiate his arguments, the learned counsel for the petitioner has drawn my attention to Ex.X1 insurance policy. For better appreciation of rival contentions, it is not out of place to extract hereunder the relevant portion of Ex.X1, which is as follows. "Add: for II to non-fare paying passengers as per IMT No.13 - Rs.50/-". A perusal of the policy clearly manifest that the first respondent paid an amount of Rs.50/- covering the risk of non-fare paying passengers. Non-fare paying passenger means the owner of the goods or authorized representative of the owner of the goods. It is not the case of the petitioner that by the time of accident he was traveling in the lorry as owner of the goods or authorized representative of the owner of the goods. Even if the averments made in the claim petition are taken to be true, at the time of accident, the petitioner was proceeding to Penukonda from

Bangalore after settlement of the dispute. The alleged act of the petitioner i.e., settlement of dispute in connection with hire charges of the lorry, will not cover the terms and conditions of Ex.X1 policy. Basing on the material available on record, the irresistible conclusion that can be drawn is that at the time of accident the petitioner was traveling in the lorry as unauthorized passenger. The accident occurred on 10.07.1999. After amendment of Section 147 of the Motor Vehicles Act in the year 1994 there is no statutory obligation on the part of the insurer to cover the risk of unauthorized passengers. The first respondent did not pay any amount covering the risk of unauthorized passengers. This clearly indicates that there is no contractual obligation on the part of the second respondent to indemnify the liability of the first respondent in respect of death of gratuitous passengers.

16. As per the principle enunciated in the decisions reported in **New India Assurance Company Limited v. Asharani**[1], **Oriental Insurance Company Limited v. Devireddy Kondareddy**[2], **National Insurance Company Limited v. Baljit Kaur**[3] and in **Manager, National Insurance Company Limited v. Saju P. Paul and another**[4], there is no statutory or contractual obligation on the part of the insurance company to indemnify the liability of the insured in case of death of gratuitous passenger. The Tribunal has considered this aspect in a right perspective and arrived at the conclusion that the second respondent is not liable to pay compensation to the petitioner. Having regard to the facts and circumstances of the

case and also the principle enunciated in the cases stated supra, I am fully agreeing with the finding recorded by the Tribunal. In the circumstances, I see no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. The appeal is devoid of merit and the same is liable to be dismissed.

17. Accordingly, the MACMA is dismissed. However, in the circumstances, no costs.

18. As a sequel, the miscellaneous petitions, if any, pending in this MACMA shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 24.02.2015
Nsr

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[1] (2003) 2 SCC 223
[2] (2003) 2 SCC 339
[3] 2004(1) ALD 98
[4] (2013) 2 SCC 41