

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

M.A.C.M.A.No.721 of 2005

JUDGMENT:

The 3rd respondent-United India Insurance Company Limited in O.P.No.321 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, East Godavari, Rajahmundry (for short, 'the Tribunal') is the present appellant. Aggrieved by the order dated 13.10.2004, whereby and whereunder the Tribunal has granted total compensation of Rs.95,440/- which includes compensation for loss of goods worth

Rs.55,440/-, preferred the instant appeal on the ground that the petitioner was not entitled to damage to loss of goods, though, he is owner of the goods transporting them in a goods vehicle as the same is not covered by the policy issued by the 3rd respondent, which was marked as Ex.B1.

2. The appellant herein is the 3rd respondent in the original petition before the Tribunal, while the 1st respondent herein is the petitioner, and respondent Nos.2 to 4 herein were respondent Nos.1, 2 and 4 respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 26.12.1999, the petitioner purchased jaggery worth Rs.55,440/- at Yerravaram as he is dealer of jaggery. He engaged the lorry bearing No.AP-W-8469 for transporting jaggery from Yerravaram to Kunavaram. The 1st respondent, who was the driver of the said lorry after crossing Maredumilli, since drove it in a rash and negligent manner and at high speed near 5 KM stone from Tiger camp of Maredumilli and Chinturu road, he lost control over the vehicle, due to which it turned upside down and fell in the right side valley. The petitioner claims that he sustained injuries and the goods were damaged. He was shifted to Government Hospital, Maredumilli and, later, he was shifted to Government Hospital, Kakinada, where he was treated and POP was applied for his broken wrist. He claims that he has undergone treatment in Vijaya Nursing Home, Kakinada and,

therefore, sought Rs.1,20,000/- as compensation which includes value of the jaggery worth Rs.55,440/- under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of APMV Rules, 1989. During the pendency of the petition, since 2nd respondent-owner of the vehicle expired, his legal representative was brought on record as 4th respondent as per orders in I.A.No.1437 of 2002 dated 07.08.2002.

5. Despite the fact that the 1st respondent also expired, since the petitioner did not choose to take any steps in bringing the legal representatives of the 1st respondent, the Tribunal recorded that the petition stood abated against the 1st respondent. Though, the 4th respondent engaged advocate, but did not contest the matter by filing written statement. Thus, only the 3rd respondent-insurer contested the claim opposing the claim, more particularly, concerning the value of the goods of the petitioner.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner himself was examined as P.W.1 besides examining C.Hanumanth Rao as PW.2 and marked Exs.A.1 to A.8. On behalf of the 3rd respondent-Insurance Company, A.Rohini Kumar was examined as RW.1 and copy of the insurance policy was marked as Ex.B.1.

7. The Tribunal, on appraisal of evidence let in by the petitioner held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal basing on the evidence of PWs.1 and 2, while granting a sum of Rs.55,440/- for loss of goods, totally granted a sum of Rs.95,440/- with interest @ 6% per annum under various heads as follows:

“The petitioner accordingly is entitled to:

(a) compensation for loss of goods : Rs.55,440/-

(b) compensation for transport charges

paid to the offending lorry : Rs.2,350/-

(c) compensation for injuries : Rs.33,000/-

(d) compensation towards transport

charges to hospital : Rs.1,000/-

(e) compensation towards extra nourishment : Rs.1,000/-

(f) compensation towards medical expenses : Rs.2,000/-

(g) compensation for pain and sufferance : Rs.650/-

Total: Rs.95,440/-

-----“

8. It is the above-said order which is under challenge, in the instant appeal preferred by the 3rd respondent-insurance company contending in the grounds of appeal that the portion of the order which relates to granting of Rs.55,440/- towards compensation for loss of goods on the ground that it was in contravention with the provisions of Section 147 of the Act and, therefore, sought to set aside that finding and to modify the award and decree accordingly.

9. Heard Sri V.Srinivasa Rao, learned counsel for the appellant and Sri N.Siva Reddy, learned counsel for the

1st respondent. It is stated that the 2nd respondent is not a necessary party by filing a memo. The appeal against the

4th respondent was dismissed for default by order dated 02.01.2012. However, dismissal of the appeal for default against the 4th respondent is of no consequence to decide the controversy involved in the instant appeal.

10. The learned counsel for the appellant contends that Section 147 of the Act makes it clear that damage to property of the owner of the goods cannot be compensated by the insurance company, more particularly, when no premium at all was paid as can be seen from Ex.B.1.

11. The learned counsel for the 1st respondent placed reliance on decisions of this Court in ***Kolla Venkateswarlu v. Abdul Kareem and another, Oriental Insurance Company Limited v. Yarava Lakshmi Devi and others, Citra Laxmi and others v. Balge Balaji and others, P.Osuramma v. P.Ramachandra and another, United India Insurance Co. Ltd., Branch Sangareddy, Medak District v. Ahmadi Begum and others*** and ***United India Insurance Co. Ltd., Hyderabad v. Tholikonda Akkamma and others***. The decision in **Kolla Venkateswarlu's case** (Supra 1) is of no assistance for the reason that the compensation granted for damage to property towards loss of property was in relation to the third party, but not

the owner of the goods transporting the goods in the accident vehicle. In **Yarava Lakshmi Devi's case** (Supra 2), the compensation was granted for the death of the owner of the goods while travelling in lorry along with the goods. In **Citra Laxmi's case** (Supra 3), the compensation was granted fastening liability on the opposite vehicle owner and insurer treating the owner of the goods as third party, but not against the owner of the vehicle and its insurer in which the claimant therein was travelling with the goods. In **P.Osuramma's case** (Supra 4), the compensation was granted to the deceased who was transporting rice and cement. A distinction was made between luggage and the goods treating three bags of rice and three bags of cement, which were being transported as luggage, but not goods. In **Ahmadi Begum's case** (Supra 5), the compensation was granted for the death of the deceased travelling in a jeep. In **Akkamma's case** (Supra 6), the compensation was granted for the death of owner of the goods treating him as third party.

12. The above decisions on which reliance was placed by the learned counsel for the 1st respondent would not assist the

1st respondent in granting compensation for loss of goods, more particularly, when Ex.B.1 does not cover the same. Hence, the appeal is allowed to the extent of setting aside the amount of Rs.55,440/- granted as compensation for the loss of goods by the Tribunal. Concerning the rest, they are all maintained.

13. In the result, the appeal is allowed in part. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: 18.02.2015.

ska