

HONOURABLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A. C.M.A. No.1729 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.37,000/- towards compensation, as against the claim for Rs.1,00,000/-, laid under Section 166 read with Section 140 of the Motor Vehicles Act, 1988, seeking enhancement of the same, petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 03-03-2003, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Nalgonda, in O.P. No.1470 of 2001.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.ADM-9447 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that in the early hours of 05-06-1999, the petitioner boarded the aforesaid lorry at Bharakathgudem with a rice beg, in order to go to

Suryapet, and on the way at about 6-30 a.m., in the outskirts of Vallabhapuram village, since driver of the lorry drove it at high speed and in a rash and negligent manner, hit a stationed lorry on the road side, due to which, the petitioner sustained injuries, and, therefore, he claimed a sum of Rs.1,00,000/- towards compensation against both the respondents contending that he was earning Rs.4,000/- per month from 'purohitham'.

5. Respondent No.1, owner of the lorry that involved in the accident, remained *ex parte* before the Tribunal.

6. The 2nd respondent, insurer of the lorry, opposed the claim. A specific plea was taken by it that it is not liable to compensate the petitioner in view of violation of terms and conditions of policy.

7. The Tribunal framed the following four (4) issues about the responsibility for the accident:

“1) Whether the pleaded accident occurred, resulting in injuries to the claimant, and if so, was it due to the fault of the driver of the lorry bearing No.ADM-9447?

2) Whether the lorry bearing No.ADM-9447 belongs R-1 and stood insured with R-2 on the date of accident, and if so whether the policy covers the risk of the claimant?

3) Whether the claimant is in principle entitled to compensation and if so, to what amount and what is the liability of Respondents 1 and 2?”

4) To what relief?

8. During enquiry, the petitioner himself examined as PW.1 and marked Exs.A-1 to A-11, amongst which Ex.A-7 is photostat copy of the insurance policy of the lorry involved in the accident.

On behalf of the respondents, no oral or documentary evidence was adduced.

9. The Tribunal held issue No.1 in favour of the petitioner based on the evidence of PW.1. On issue No.2, as to whether the insurance policy covers risk of the petitioner, by elaborately discussing the fact situation occurring in the instant case, arrived at the conclusion that the petitioner was an unauthorised passenger in the lorry, which was a goods vehicle, and, therefore, held that the insurance company cannot be fastened with liability for payment of compensation to the petitioner that would be determined under issue No.3. On issue No.3, the Tribunal, having considered the evidence on record, granted a sum of Rs.20,000/- towards hospital expenses and purchase of medicines, Rs.10,000/- towards pain and suffering for both injuries under the head of non-pecuniary losses, Rs.1,000/- towards transportation charges, Rs.2,000/- towards extra-nourishment and Rs.4,000/-

towards loss of earnings, and, thus, awarded a total sum of Rs.37,000/- with interest at 9% per annum.

10. Dissatisfied with the aforesaid order, the instant appeal is preferred by the petitioner contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record, though PW.1's evidence proves that he was carrying a rice bag and that he was owner of the said goods, still, the Tribunal dismissed the claim without properly appreciating the fact-situation, and, therefore, sought to grant the balance amount of Rs.63,000/-.

11. Heard Sri Chalakani Venkat Yadav, learned counsel for the petitioner, and Sri C.V. Rajeeva Reddy, learned counsel for the 2nd respondent - insurer.

12. Despite service of notice, none appears for respondent No.1, owner of the lorry.

13. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioner.

14. The Tribunal, under issue No.2, has dealt with elaborately the fact-situation and found that the evidence of the petitioner himself discloses that Exs.A-1 and A-2 do not support his case that he was travelling along with a rice bag in the lorry at the relevant time and further, even

PW.1 did not assert in his evidence that he was travelling with a rice bag. It is also observed that merely because the petitioner was carrying a rice bag in a goods vehicle, he cannot be termed as owner of the goods, based on the Full Bench decision of the Hon'ble Apex Court in **New India Assurance Company Limited v. Asharani & others**^[1], and also observing that Ex.A-7 insurance policy does not cover the risk of the petitioner, answered the issue against the petitioner.

15. The above observations made by the Tribunal since based on appreciation of evidence on record through PW.1 and Exs.A-1 and A-2, certainly, cannot be faulted with as no legal infirmity is to be found warranting interference of this Court. This apart, the 2nd respondent placed reliance on **National Insurance Company Limited v. Bommithi Subbhayamma and others**^[2] for the proposition that statutory liability of the insurer does not cover gratuitous passengers carried in a goods vehicle referring to

Section 147(1)(b) of the Motor Vehicles Act, 1988, which position has not been altered even after introducing 1994 amendment to the said provision. Thus, there is absolutely no merit in the instant appeal to fasten liability on the 2nd respondent, insurer, or to enhance the compensation.

16. Therefore, the appeal is dismissed confirming the order under challenge passed by the Tribunal. There shall be no order as to costs.

17. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 24, 2015.

PV

[\[1\]](#) 2002(10) 162

[\[2\]](#) (2005) 12 SCC 243