

The Hon'ble Sri Justice T. Sunil Chowdary
MACMA No.305 OF 2009

JUDGMENT:

1 Challenging the judgment and award dated 12.12.2007 passed in MVOP No.516 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati whereunder and whereby an amount of Rs.5,90,294/- was awarded to the claimant towards compensation, the insurer has filed this appeal.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed before the Tribunal.

3 The facts leading to the filing of the present appeal are briefly as follows:

4 On 20.08.2004 at about 12.00 Noon the petitioner and others were engaged as coolies in a tractor and trailer bearing No.AP 21 U 4367 and AP 21 U 4368 (hereinafter referred to as the 'crime vehicle') for the purpose of loading and unloading manure by the first respondent. When the crime vehicle reached Penukulapadu on Srikalahasthi Punganur road, the driver of the crime vehicle drove the same in a rash and negligent manner and hit a roadside tree due to which the petitioner and others sustained injuries. In connection with the said accident, the Station House Officer, Srikalahasthi Rural Police Station registered a case in Cr.No.89 of 2004 under sections 337 and 338 of IPC against the driver of the crime vehicle. The petitioner was initially admitted as inpatient in Area hospital, Srikalahasthi and from there he was shifted to SVRRGG hospital, Tirupati and again to CMC hospital, Vellore for better treatment. The petitioner's both legs were amputated up to knee. The petitioner spent nearly Rs.1,50,000/- towards medicines and treatment. By the date of accident, the petitioner was aged about 25 years and used to earn Rs.150/- per day as cooli. The petitioner is not able to earn anything due to amputation of his both legs. The crime vehicle which belongs to the first respondent was insured with the second respondent. Therefore, the respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioner. Hence, the petitioner filed the

petition under Sections 166 (1) (a) of the Motor Vehicles Act claiming compensation of Rs.6,00,000/- from the respondents 1 and 2.

5 The first respondent who is the owner of the lorry remained *ex parte*. The second respondent – insurer filed counter, *inter alia*, contending that at the time of accident the first respondent used the crime vehicle for commercial purpose and thereby the first respondent violated the terms and conditions of the policy. It is further contended that at the time of accident, six persons were traveling in the crime vehicle including the driver and owner and thereby the first respondent violated the terms and conditions of the policy. The amount of compensation claimed by the claimants, under various heads, is highly excessive and exorbitant. Hence the petition is liable to be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the pleaded accident occurred and if so was it due to fault of driver of the tractor and trailer of first respondent bearing No.AP 21 U 4367 and 4368?
- ii. Whether the tractor and trailer in question belongs to R.1 and stood insured with R.2 by the date of accident and if so whether the policy covers the risk of the petitioner?
- iii. Whether the petitioner suffered injuries and entitled to compensation and if so to what amount and from which of the respondents?
- iv. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 to 3 were examined and Exs.A.1 to A.6 were marked. On behalf of the 2nd respondent, no oral evidence was let in, but Exs.B.1 and B.2 were marked.

8 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, held that the accident occurred due to the rash and negligent driving of the driver of the tractor and trailer bearing No.AP 21 U 4367 and 4368 belonging to the first respondent and allowed the petition in part by awarding compensation of Rs.5,90,264/-. As stated *supra*, feeling aggrieved by the judgment and award of the Tribunal, the second respondent – insurance company filed the present appeal.

9 Smt. A.Jayanthi, the learned counsel for the appellant – second respondent submitted that the amount of compensation awarded under various heads is excessive and exorbitant. She further submitted that the Tribunal wrongly fastened the liability on the second respondent despite the first respondent violated the terms and conditions of the policy.

10 *Per contra*, Sri A. Chandraiah Naidu, the learned counsel for the petitioner submitted that the first respondent had not violated the terms and conditions of the policy. He further submitted that the Tribunal has awarded just and reasonable compensation to the petitioner.

11 Now the points for consideration in this appeal are:

1. **Whether the Tribunal has awarded just and reasonable compensation to the petitioner?**
2. **Whether the first respondent had violated terms and conditions of Ex.B.1 policy so as to absolve the liability of the second respondent?**

POINT No.1:

12 As seen from the testimony of P.W.1 coupled with Exs.A.1 and A.2 it is clear that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. The Tribunal considered the oral and documentary evidence in right perspective and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal so far as the manner of accident and the factum of sustaining injuries by the petitioner are concerned.

13 As per the oral testimony of P.W.1, due to the accident, he sustained fracture to both legs. His testimony further reveals that his both legs were amputated above the knee joint. As per the testimony of P.W.2, the petitioner took treatment as inpatient in CMC hospital, Vellore and spent an amount of Rs.1,28,634-86 ps towards medicines. A perusal of the record reveals that the petitioner took treatment as inpatient in Area hospital, Srikalahasthi, SVRRGG hospital, Tirupathi as well as CMC hospital,

Vellore. The petitioner has produced medical bills to the extent of Rs.1,28,650/- The Tribunal awarded the above said amount basing on the oral and documentary evidence available on record. Viewed from any angle, I am of the considered view that awarding of an amount of Rs.1,28,650/- towards medicines and treatment is just and reasonable.

14 The Tribunal awarded an amount of Rs.40,000/- towards pain and suffering. As observed earlier, the petitioner's both legs were amputated above the knee joint. The petitioner might have suffered a lot due to the amputation of his both legs. Therefore, awarding of an amount of Rs.40,000/- towards pain and suffering is also just and reasonable.

15 The Tribunal awarded Rs.4,21,614/- towards loss of future income. As seen from the testimony of P.W.2 and also Ex.A.5, it is manifestly clear that the petitioner sustained 100% disability. A person without his two legs may not be in a position to earn anything. The loss of future income of the petitioner is 100%. A perusal of the impugned award clearly reveals that basing on the G.O.Ms.No.33, Labour, Employment, Training and Factories (Lab.II), dated 17.7.2004 the Tribunal assessed the income of the petitioner at Rs.23,423/- p.a. The petitioner may earn not less than Rs.2,000/- p.m. even by attending cooli work. Therefore, the Tribunal is justified in assessing the annual income of the petitioner at Rs.23,423/- By the date of accident, the petitioner was aged 26 years. Hence the Tribunal has taken the multiplier as 18. So the loss of future earnings would come to $\text{Rs.23,423} \times 18 = \text{Rs.4,21,614/-}$. The Tribunal has taken into account various aspects and ground realities while assessing the income of the petitioner. Having regard to the facts and circumstances of the case, I am of the considered view that the Tribunal has awarded fair, just and reasonable compensation to the petitioner.

16 In the light of the foregoing discussion, I am unable to accede to the contention of the learned standing counsel for the second respondent that the amount of compensation awarded to the petitioner is excessive and exorbitant.

POINT No.2:

17 It is an admitted fact that by the date of accident the petitioner was traveling in the crime vehicle. As per the testimony of P.W.1, by the date of accident he was travelling in the crime vehicle as cooli and the first respondent engaged him as such. In the cross examination of P.W.1 it is not elicited that he was travelling in the crime vehicle as unauthorized passenger. As per the recitals of Ex.A.1-FIR and A.3-Charge sheet, it is clear that by the time of accident the petitioner was travelling in the crime vehicle as cooli. Further, at the earliest point of time, the petitioner disclosed to the police that by the time of accident he was travelling in the crime vehicle as cooli. As per the testimony of R.W.1, at the time of accident the petitioner was travelling in the crime vehicle as unauthorized passenger. Admittedly, R.W.1 was not an eyewitness to the accident. In view of the recitals of Exs.A.1 and A.2 it is not safe to place reliance on the oral testimony of R.W.1. The material placed before the Tribunal clingingly establishes that by the time of accident the petitioner was travelling in the crime vehicle as an agricultural cooli and not as an unauthorized passenger.

18 Ex.B.1 policy covers the risk of coolies. A perusal of Ex.B.2 reveals that the first respondent paid premium of Rs.175/- covering the risk of seven employees. Admittedly at the time of accident, the crime vehicle was used for transportation of manure to the agricultural fields of the first respondent. So, the vehicle in question was used for agricultural purpose as on the date of accident. Absolutely there is no material on record to show that the first respondent had violated the terms and conditions of Ex.B.1-Policy so as to absolve the liability of the second respondent.

19 In the light of the foregoing discussion, I am unable to accede to the contention of the learned standing counsel for the second respondent that the first respondent had violated the terms and conditions of Ex.B.1-policy. The first respondent being the owner of the crime vehicle is vicariously liable for the wrongful acts done by his employee. The crime vehicle which

belongs to the first respondent was insured with the second respondent under Ex.B.1 as on the date of accident. Hence the second respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. I see no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

20 Accordingly the appeal is dismissed. No order as to costs. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

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T.SUNIL CHOWDARY, J.

Date: 18th February, 2015.

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