

HON'BLE SMT JUSTICE ANIS
M.A.C.M.A.No.272 of 2005

J U D G M E N T:

This appeal is filed by the appellant/second respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 12.12.2003, passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Visakhapatnam, in O.P.No.825 of 2000, awarding compensation of Rs.30,000/-.

2. The respondent No.1/petitioner filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.2,00,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 07.03.2002.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 26.09.1999 at about 08:30 a.m, petitioner being the labourer was coming from Anandapuram junction to Visakhapatnam in a Sand lorry bearing No.AP.31.V.5568 and near Gambhiram village, the driver of the lorry drove the vehicle in a rash and negligent manner without following traffic rules. Consequently, the lorry hit against the scooter coming in the opposite direction, turned turtle and the petitioner sustained injuries. He was treated in K.G.H. Visakhapatnam. Anandapuram police registered the case in Cr.No.134 of 1999 against the driver of the lorry. The respondent No.1 being the owner and respondent No.2 being the insurer are jointly liable to pay compensation to the petitioner.

5. Before the Tribunal, the first respondent remained *ex parte*.

6. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioner to prove the manner of accident, his age and income and treatment taken by him in the Hospital. The second respondent stated that the driver of the lorry allowed more than required number of persons in the cabin and all of them were gratuitous passengers and they were carried in violation of policy conditions and finally stated that the quantum of compensation claimed by the petitioner is high, excessive and exorbitant, and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate his claim, the petitioner got examined himself as PW.1 and got marked Exs.A.1 to A.8 on his behalf. On behalf of the contesting respondent, RW.1 was got examined and Exs.B1 & B2 got marked.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry in which the petitioner sustained injuries and awarded compensation of Rs.30,000/- along with interest at 9% p.a. to the petitioner against both the respondents.

9. Being aggrieved by the award passed by the Tribunal, the second respondent preferred the present appeal.

10. The learned counsel appearing for the appellant/second respondent argued that the petitioner travelled on the roof of the vehicle in violation of the conditions and the Tribunal erroneously fastened the liability on the appellant/Insurance Company. Further, there is a contributory negligence on the part of the petitioner also. It is also argued that the Tribunal erroneously awarded interest at 9% p.a; that in a case out of the same accident, this Court already allowed the appeal of the Insurance Company and relied upon the case law reported in ***Oriental Insurance Co. Ltd., v. Kolusu Adilaxmi and others***^[1] and prayed the Court to

allow the appeal by exonerating its liability.

11. Though notice was served on the first respondent, none appeared to defend on his behalf.

12. The learned counsel appearing for the second respondent/petitioner argued that after considering the oral and documentary evidence, the Tribunal rightly awarded compensation against the appellant/respondent and the said finding needs no interference. Petitioner has not travelled as gratuitous passenger and prayed the Court to dismiss the appeal.

13. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

Whether the appellant/second respondent is liable to pay compensation to the first respondent/petitioner or not?

14. **P O I N T:** A perusal of the evidence produced before the Tribunal shows that there is no dispute about the fact that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AP.31.V.5568, in which the petitioner sustained injuries. The learned counsel for the appellant also has not disputed about the quantum of compensation awarded by the Tribunal to the respondent/petitioner. Therefore, these findings of the Tribunal regarding the manner of accident and quantum of compensation, needs no interference.

15. The main contention of the learned counsel for the appellant is that the petitioner was travelling as a gratuitous passenger and as such the Insurance Company is not liable to pay any compensation. He relied on the case law reported in ***New India Assurance Co. Ltd., v. Asha Rani and others***^[2], wherein the Apex Court held that the Insurance Company is not liable to pay compensation in case of violation of conditions of policy under the provisions of the Act. Further, he also relied upon the

case law reported in ***National Insurance Co. Ltd., v. Bommithi Subbhayamma and others***^[3].

16. In ***Kolusu Adilaxmi's case*** (first cited supra), this Court had categorically held that the Insurance Company is not liable to pay compensation to the dependents of the gratuitous passengers. A perusal of the copy of the judgment shows that the vehicle involved in the present case and the vehicle invoked in the above referred case is one and the same i.e., lorry bearing No.AP.31.V.5568. This Court has already taken a view in the said case that petitioners are gratuitous passengers and Insurance Company is not liable to pay compensation to the petitioners. Therefore, considering the ratio already decided by this Court, the appeal is allowed setting aside the order dated 12.12.2003, passed in O.P.No.825 of 2000 by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Visakhapatnam to the extent of fastening the liability to the appellant/Insurance company. The remaining portion of the relief that owner of the vehicle is liable to pay compensation to the petitioner is unaltered.

16. Accordingly, the appeal is allowed. No order as to costs.

17. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 07.08.2015

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^[1] 2015 (3) ALD 722

^[2] 2003 ACJ 1

^[3] 2005 ACJ 721