

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.203 of 2009

JUDGMENT:

1 Dissatisfied with the judgment and award dated 12.09.2008 passed in M.V.O.P.No.76 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District & Sessions Judge, Nellore, wherein and whereby an amount of Rs.1,12,000/- was awarded as compensation by fastening the liability on the owner of the crime vehicle, the claimant filed the present appeal.

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

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

4 On 16.04.2001 the petitioner engaged the lorry bearing No.AAN-5076 for transportation of hay Alluru to Nellore and after unloading the hay at Nellore, he was travelling in the cabin of the lorry to Alluru for another load of hay. On the way, at Pyderu bridge near Kondayapalem village, the driver of the lorry drove the same in a rash and negligent manner and at high speed, dashed against the bridge wall due to which the petitioner fell down from the cabin and sustained fractures on various parts of the body and took treatment in DSR Government hospital, Nellore. The petitioner also took treatment in government hospital at Chennai and spent huge amount towards medicines and treatment. By the date of accident, the petitioner was aged about 45 years and used to earn Rs.6,000/- p. m. The accident occurred due to the rash and negligent driving of the driver of the lorry. The lorry bearing No.AAN-5076 which belongs to the first respondent was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2.00 lakhs to the petitioner.

5 First respondent remained *ex parte*. Second respondent filed counter denying the material averments made in the petition inter *alia* contending that by the date of accident the petitioner was travelling in the lorry as unauthorised passenger. The terms and conditions of the policy do not cover the risk of unauthorised passengers. The amount of compensation claimed by the

petitioner under various heads is excessive and exorbitant. This respondent is not liable to pay compensation to the petitioner unless the petitioner establishes that the driver of the lorry was having valid and effect driving licence as on the date of accident. Hence the petition may be dismissed.

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

- i. Whether the accident in question occurred if so was it due to rash and negligent driving of driver of lorry bearing Registration No.AAN-5076?
- ii. Whether the claimant is entitled to the compensation if so to what amount and from which of the respondent?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents R.Ws.1 and 2 were examined and Exs.B.1 and B.2 were marked.

8 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AAN-5076 and allowed the petition in part by awarding compensation of Rs.1,12,000/- with interest at 6% p.a from the date of filing of the petition till the date of deposit by fastening the liability only on the owner of the crime vehicle i.e. first respondent. Being dissatisfied with the amount of compensation awarded and also feeling aggrieved by the finding of the Tribunal in fastening the liability on the first respondent alone, the petitioner filed the present appeal.

9 Heard Sri M.Venkata Narayana, the learned counsel for the petitioner and Sri R. Venkateswara Rao, the learned counsel for the second respondent.

10 The contention of the learned counsel for the petitioner is two fold viz., 1) The amount of compensation awarded by the Tribunal under different heads is too meagre, and 2) The Tribunal committed error while arriving at a conclusion that by the time of accident the petitioner was travelling in the lorry as gratuitous passenger.

11 *Per contra*, the learned counsel for the second respondent submitted that by the time of accident, the petitioner was travelling in the lorry as unauthorised

passenger and hence there is no statutory or contractual obligation on the part of the second respondent to indemnify the liability of the first respondent. He further submitted that Ex.P.1 policy does not cover the risk of gratuitous passengers.

12 Now the points that fall for determination in this appeal are:

1 .Whether the Tribunal awarded just and reasonable compensation or not?

2. Whether the Tribunal committed error in not fastening the liability on the 2nd respondent?"

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Point No.1:

13 As per the finding of the tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AAN-5076. The respondents did not choose to file appeal or cross objections challenging the finding of the Tribunal on issue No.1. Therefore, the finding of the Tribunal on issue No.1 has become final. I am fully agreeing with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AAN-5076.

14 The oral testimony of P.Ws.1 and 2 coupled with Ex.A.3 wound certificate reveals that the petitioner sustained fracture to 6th rib and fracture to lower end of radius, compound fracture to left ankle. Due to three fractures and crush injury, the petitioner might have suffered a lot. Taking into consideration the nature of fractures sustained by the petitioner, this Court is inclined to award Rs.30,000/- towards pain and suffering instead of Rs.10,000/- as awarded by the Tribunal.

15 Basing on Exs.A.3, A.4 A6 and A.7, the Tribunal awarded Rs.10,000/- towards medical expenses. The Tribunal also awarded an amount of Rs.2,000/- towards attendant charges and Rs.3,000/- towards transportation charges. Due to fracture, the petitioner might not have attended to work for a period of four months. The Tribunal has rightly awarded an amount of Rs.12,000/- towards loss of earnings. Taking into consideration the nature of injuries sustained by the petitioner, the Tribunal has rightly awarded an amount of Rs.75,000/-

towards loss of earning capacity and permanent disability.

16 The total amount of compensation which the petitioner is entitled to under various heads is as follows:

Pain and suffering: Rs.30,000/-
Medical expenses: Rs.10,000/-
Attendant charges: Rs.2,000/-
Transportation charges: Rs.3,000/-
Loss of earnings: Rs.12,000/-
Permanent disability: Rs.75,000/-

TOTAL: Rs.1,32,000/-

17 The amount of compensation awarded under the above heads is just and reasonable to meet the ends of justice.

POINT No.2:

18 The oral testimony of R.Ws.1 and 2 coupled with Ex.B.1 reveals that the lorry which belongs to the first respondent was insured with the second respondent with effect from 19.12.2000 to 18.12.2001. Hence by the date of accident, Ex.B.1 policy was in force. A perusal of Ex.B.1 reveals that the first respondent paid Rs.30/- covering the risk of non fare paid passengers. If the insured pays extra premium covering the risk of owner of the goods or authorised agent of the owner of the good, the insurer has to indemnify the liability of the insured in case of injuries or death of owner of the goods. Ex.B.1 policy covers the risk of owner of the goods.

19 The crucial point that falls for consideration is whether at the time of accident the petitioner was travelling as owner of the goods or as a gratuitous passenger?

20 As per the testimony of P.W.1, on the date of accident, he engaged the crime vehicle for transportation of hay from Alluru to Nellore. His testimony further reveals that after unloading the hay at Nellore, he was proceeding in the

lorry towards Alluru. It is not in dispute that the accident occurred when the petitioner was proceeding to Alluru. It is also not in dispute that by the time of accident, the lorry was not loaded with hay. In Ex.A.1 – FIR and in Ex.A.2 – charge sheet, it is not mentioned that on the date of accident, the petitioner engaged the lorry for transportation of hay from Alluru to Nellore. If really the petitioner had engaged the crime vehicle for transportation of hay, the same might have been reflected in Exs.A.1 and A.2. After the accident, the possibility of taking the plea that the petitioner was travelling in the lorry as owner of the goods cannot be ruled out completely. The Tribunal has rightly considered the oral testimony of P.W.1 and the recitals of Exs.A.1 and A.2 and arrived at a conclusion that by the time of accident, the petitioner was travelling in the crime vehicle as unauthorised passenger only. The finding of the Tribunal on this aspect is supported by oral and documentary evidence. The material available on record falls short to establish that by the time of accident the petitioner was travelling in the lorry as owner of the goods i.e. hay. There is no statutory or contractual liability on the part of the insurer to indemnify the liability of the insured in case of injuries or death of an unauthorised passenger.

21 In order to resolve the issue, this Court is placing reliance on the following decisions. 1) ***New India Assurance Company Ltd. Vs. Asharani***, 2) ***Oriental Insurance Co. Ltd Vs. Devireddy Kondareddy***, 3) ***National Insurance Co. Ltd Vs. Baljit Kaur***, and 4) ***Manager, National Insurance Co. Ltd. Vs. Saju P Paul and another***.

22 As per the principle enunciated in the cases cited supra, there is no statutory obligation on the part of the insurer to indemnify the liability of the insured in case of injuries or death of an unauthorised passenger.

23 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the Tribunal has not committed any illegality while dismissing the petition against the second respondent. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal except to the extent of enhancing the quantum of compensation from Rs.1,12,000/- to Rs.1,32,000/- as observed in the foregoing paragraphs.

24 In the result, the appeal is allowed in part by enhancing the compensation from Rs.1,12,000/- as awarded by the Tribunal to Rs.1,32,000/- with interest at 6% p.a. from the date of filing of the petition till the date of deposit. It is further clarified that the first respondent alone is liable to pay the compensation to the petitioner. The petition against the second respondent is dismissed. Consequently, miscellaneous petition if any pending in this miscellaneous appeal shall stand closed. No order as to costs.

T.SUNIL CHOWDARY, J.

Date: 22nd April, 2015.

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