THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.2712 of 2004

JUDGMENT:

The 2nd respondent/Insurance Company filed this Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) assailing the award dated 02.05.2000 of the learned Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Hindupur passed in OP.No.98 of 1999.

2. I have heard the submissions of the learned counsel for the appellant/Insurance Company and the learned counsel for the first respondent/claimant. This appeal against the 2nd respondent/owner-cum-insured was dismissed for default. Even though this appeal is dismissed against the owner-cum-insured of the vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company in view of a judgment of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others.**

2. (a) The parties in this appeal shall hereinafter be referred to as 'the insurance company' and 'the claimant'.

3. To begin with, the primary facts, in brief, are as follows: The claimant while travelling from Pedaballi to go to Gorantla, in a Mahindra Mini Bus bearing registration no. KA 03-3917, had sustained injuries when the said Bus dashed against a tree near Pedaballi High School on account of the rash and negligent driving of the driver of the said Bus. Therefore, the claimant had filed the claim petition claiming a total compensation of Rs.1,20,000/-. The 1st respondent before the Tribunal/owner-cum-insured had remained ex parte. The Insurance Company filed a written statement resisting the claim on various grounds. At trial, the claimant was examined as PW1 and exhibits A1 to A4 were marked on the side of the claimant. No oral and documentary evidence was adduced on the side of the Insurance Company. On merits, the Tribunal having held that the pleaded accident resulting in injuries to the claimant had occurred due to the rash and negligent driving of the driver of the mini bus bearing registration no.KA.03-3917 had awarded a compensation of Rs.85,000/- to the claimant payable with interest at 12% per annum simple from the date of the petition till the date of payment or realisation besides proportionate costs. The Tribunal had further held that both the respondents are jointly and severally liable to pay the said compensation with interest and costs to the claimant and had accordingly directed the Insurance company to deposit the awarded amount with interest and costs within one month.

4. Having been aggrieved of the said Award, the Insurance Company had preferred this appeal.

5. (a) The learned counsel for the Insurance Company had contended as follows:

The claimant had sustained injuries while travelling in a mini Bus when the said Bus met with an accident due to the negligence of the driver of the bus and that therefore, the claimant who had travelled in the Bus as an unauthorised/fare paid passenger is not entitled to claim any compensation from the insurance company as the terms and conditions of the permit and the policy are violated. However, the Tribunal had erroneously saddled the insurance company with the liability to pay the compensation. The claimant had sustained simple injuries. The said injuries had healed after simple conservative treatment. The claimant did not suffer any disability on account of the injuries sustained in the accident. The compensation awarded to the claimant is high and excessive. The Tribunal ought not to have awarded Rs.75,000/- as compensation towards injuries and disability besides Rs.10,000/- towards medical expenditure. The Tribunal had erred in awarding interest at the rate of 12% per annum simple on the compensation amount from the date of petition till date of realisation. Therefore, the appeal may be allowed and the insurance company may be exonerated from the liability to pay the compensation.

5. (b) On the other hand, the learned counsel for the claimant had contended as follows:

The Mini Bus is a passenger Bus and is not a goods vehicle. Therefore, the question that the claimant had travelled in the Bus as an unauthorised passenger does not arise for consideration. The claimant who was of 50 years of age at the time of accident had sustained multiple injuries including a fracture injury. Immediately after the accident, he was shifted to Government Head Quarters Hospital, Anantapur. On the same day he was shifted to Manipal Hospital, Bangalore for treatment by experts. Later, he had received treatment from the said hospital for three times. He had spent huge money on medicines, hospital charges, attendant and transport etcetera. On account of the grievous injury sustained in the accident, he had suffered permanent disability. He is an agriculturist. He is unable to attend to his agricultural works or any other works as in the past. He had lost his livelihood at the age of 50 years. The Tribunal having considered the facts and the evidence had rightly awarded a compensation of Rs.85,000/-. The claimant having been satisfied with the amount awarded did not prefer any appeal or cross appeal. The policy in respect of the mini bus is a comprehensive package policy and necessary premium is collected by the insurance company to cover the risk of the inmates of the bus. In the facts and circumstances of the case, the contentions urged by the insurance company do not merit consideration. Hence, the appeal, which is devoid of merit, is liable to be dismissed.

6. The points that arise for determination in this appeal are:

> **1. Whether the compensation awarded is high and excessive as contended by the appellant/Insurance company, in the facts and circumstances of the case? And, if so, what shall be the just and fair compensation to be awarded to the claimant in this appeal?**
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> **2. Whether the Tribunal had erred in holding that the insurance company is jointly and severally liable to pay the compensation awarded to the claimant along with the owner-cum-insured of the mini bus?**

7. <u>POINT No.1:</u>

7. (a) On the aspect of injuries and allied aspects, the case of the claimant is this: 'In the pleaded accident the claimant had sustained a grievous fracture injury besides cut and bleeding injuries. He was first admitted in Government Headquarters Hospital, Anantapur. On the same day, he was shifted to Manipal Hospital, Banglore for treatment by experts. He had received inpatient treatment in the said Hospital for four days. After discharge he had again received treatment three times from the said hospital. On account of the injuries, he had suffered permanent disability. He is unable to do his agricultural works and other works. He had incurred an expenditure of Rs.30,000/- on transport and medical expenses. Now, he is not getting any income from his agriculture or from any other source as there is nobody to cultivate his lands. He is finding it difficult to survive. Prior to his involvement in the accident, he was hale and healthy and was earning Rs.4,000/- per month on his agriculture.'

7. (b) On the other hand, the case of the Insurance Company on this particular aspect is in the nature of general and specific denial; and, the insurance company had put the claimant to strict proof of his pleaded case in this regard and his entitlement to the compensation.

7. (c) The claimant/PW1 while deposing in line with his pleadings had further asserted as follows: - 'The head injury was treated by applying sutures. Eleven sutures were put. Injury on the face was also treated by suturing. On account of the fracture of the bones of right shoulder, he had sustained disability. By the time of accident, he was of 50 years of age. He was an agriculturist and was earning Rs.4,000/- per month prior to the accident. He has got Ac.8.00 cents (wet and dry land). He is not able to attend to agricultural operations. He had incurred an expenditure of Rs.40,000/-on his treatment and medicines. He had suffered permanent disability. Except him, there is nobody else in the family to attend to the agricultural works. He is unable to lift even a small weight. He had lost his capacity to eke out livelihood for himself and his family. His lands became fallow.' In his evidence, the copy of wound certificate-exhibit A2, his discharge summary issued by Manipal Hospital-exhibit A3 and a bunch of medical bills for Rs.25,590/-exhibit A4 were exhibited. He had maintained his stand in his cross examination by denying the suggestions put to him in line with the defence of the insurance company. When it was suggested to him that he did not suffer any disability and had not incurred any expenditure as stated by him and that he does not own any lands and that the bills under exhibit A4 are brought up for the purpose of the claim and that he is not entitled to any compensation, he had denied all the suggestions. A perusal of exhibit A2-the copy of wound certificate would show that PW1 had sustained the following injures: '**Black eye (left); laceration of 2" x ¼"x scalp deep over the left parietal region; laceration of 3" x ¼" x 5 x skin deep horizontal over left clavicle; contusion of 3" diameter left shoulder; contusion of 2" diameter over the left scapula.'** And exhibit A3-the discharge summary issued by Manipal Hospital on a perusal would show that PW1 was having two lacerated sutured wounds over left parietal regions and left infra orbital region and left black eye and that he was neurologically conscious, alert and oriented at the time of his examination at the said hospital on 10.01.1999. He was treated conservatively by an orthopaedician for the fracture of scapula is also evident from exhibit A3. Thus, it is evident that the claimant had sustained two lacerated wounds which were sutured i.e., one on the left parietal region and the other on the left infra orbital region besides one more injury viz., left black eye. X ray-Chest and left shoulder had revealed that he had sustained fracture neck of scapula and that he was treated conservatively. The medical record also shows that he was admitted in the Manipal Hospital on 10.01.1999 and was discharged on 13.01.1999. Having regard to the facts and circumstances of the case and the evidence on record, which is adverted to supra, this Court is of the well considered view that compensation of Rs.85,000/- awarded by the Tribunal cannot be said to be high and excessive. The point is answered accordingly.

8. <u>POINT No.2:</u>

The case of the claimant relevant to this point is that at the time of accident, he had travelled on a Mahindra Mini Bus bearing No.
KA. 03 -3917 from Pedaballi to go to Gorantla and that on the way, the driver drove the Bus at a high speed and in a rash and negligent manner and had dashed the Bus against a tree near Pedaballi High School on Kotcha-Cheruvu – gorantla main road and that in the said accident, he had sustained injuries. Per contra, the Insurance company while denying in its written statement the manner of accident and also the age, occupation and income of the claimant had inter alia contended

that it does not admit the injuries said to have been sustained by the claimant in the pleaded accident and that the compensation claimed is excessive and abnormal and that the claimant did not mention the policy number correctly in the claim petition; However, the Insurance Company did not take any defence that the claimant travelled in the mini Bus as an unauthorised passenger. Therefore, the Insurance company cannot contend that it is not liable to pay the compensation, without taking any defence in its written statement to the effect that the claimant travelled as an unauthorised/fare paid passenger and that the policy does not cover the risk of the inmates of the mini bus. When the claimant was examined as PW1 and had reiterated his pleaded case, the insurance company did not adduce any evidence in rebuttal. In the facts and circumstances of the case, and in the light of the evidence and particularly in the absence of any pleading in the written statement of the insurance company in support of the contentions now raised before this court, it must follow that the contention of the insurance company that it is not liable to pay the compensation is devoid of merit and cannot be countenanced. Moreover, the bus is a mini bus and not a goods vehicle. The insurance company without producing the copy of the policy along with its schedule cannot be permitted to contend that the policy does not cover the risk of the inmates of the mini bus. Accordingly, this court holds that the Tribunal is correct in fastening the liability on the appellant/insurance company to pay the compensation awarded to the claimant with interest and costs. The point is accordingly answered against the appellant.

9. Before parting with the case, it is necessary to mention that the learned counsel for the insurance company had contended that interest was awarded @ 12% per annum on the compensation amount and that the same is on the higher side. In the instance case, the accident had occurred on 10.01.1999. During that relevant period, the Tribunals were awarding interest at the rate of 12% per annum simple on the compensation amount. Having regard to the quantum of compensation awarded to the claimant, this court is of the well considered view that there is no reason to interfere with the rate of interest awarded on the compensation amount, in the facts peculiar to the case.

10. Viewed thus, this court finds that there is no merit in the appeal.

11. In the result, the appeal is dismissed. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

17th April, 2015

Vjl

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.2712 of 2004

17th April, 2015

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