THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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CIVIL MISCELLANEOUS APPEAL No.1687 OF 2003

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CROSS-OBJECTION (SR) No.44760 OF 2003

COMMON JUDGMENT:

This appeal as well as cross-objections are filed against the award passed in O.P. No.1141 of 2000 on the file of Motor Accidents Claims Tribunal-cum-District Judge at Nizamabad (for short, 'the Tribunal'). The first respondent herein filed the claim petition, claiming an amount of Rs.16,00,000/- for the injuries sustained by him in a motor accident that occurred on 05.07.2000 at about 3.30 p.m. while he was travelling in a Jeep bearing No.MH-30-B-1064. When the said Jeep reached from Chittapur to Balkonda road on NH No.7 road, the driver of the jeep drove the same in a rash and negligent manner, due to which the petitioner fell down from the jeep and sustained injuries to spine and spinal cord. He was initially shifted to Government Hospital, Nizamabad, and thereafter he was referred to Hyderabad for better treatment. As on the date of petition, the petitioner was aged about 20 years and was a mason and building contractor, earning an amount of Rs.10,000/- per month. The said claim of the petitioner was contested by the first respondent -owner of the vehicle as well as the second respondent - insurance company.

02. The second respondent - insurance company specifically stated that it is not liable to pay any compensation as per the limitations prescribed in the insurance policy. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident had taken place due to rash and negligent driving of the vehicle bearing No.MH-30-B-1064 by its driver?

2. Whether the petitioner is entitled for compensation? If so, to what amount and from which of the respondents?

3. To what relief?

03. On issue No.1, the Tribunal held that the accident occurred on account of rash and negligent driving of the Jeep bearing No.MH-30-B-1064 driven by its driver.

04. With regard to the compensation, the petitioner was examined himself as P.W.1 and examined the doctor as P.W.2. During the course of chief- examination of the petitioner, Exs.C.1 to C.14 were marked. On the basis of oral and documentary evidence, the Tribunal considered the annual income of the petitioner from all sources apart from agriculture as Rs.45,000/- and Rs.36,000/- from cultivation. The total annual income of the petitioner, thus, was taken as Rs.81,000/-. Since the petitioner was aged 20 years as on the date of accident, the Tribunal had applied the multiplier of ‘17’. Further the Tribunal has considered Ex.C.4, in which it was mentioned that the petitioner suffered 70% functional disability. The Tribunal awarded an amount of Rs.50,000/- towards medical expenses, an amount of Rs.2,00,000/- towards social disability and loss of amenities, loss of pleasures and chances of marriage, an amount of Rs.50,000/- towards pain and suffering, and Rs.10,000/- for transportation to hospital and extra nourishment. Thus, in all, the petitioner was awarded an amount of Rs.12,74,112/-.

05. The present appeal is preferred by the second respondent - insurance company disowning its liability and the claimant also filed cross-objections seeking enhancement of the compensation.

06. With regard to the liability of the insurance company, learned counsel for the appellant drew the attention of this Court to Ex.B.1 – Policy and the deposition of R.W.1, who deposed on behalf of the second respondent. During the course of examination, R.W.1 categorically asserted that the policy is an “Act policy” and the inmates of the Jeep are not covered under the said policy. Learned counsel for the claimants/ cross-objectors submitted that the inmates of the Jeep are also covered

under the Act Policy, in view of the decisions of this Court reported in **New India Assurance Company Limited v. Palamoni Suresh and another** and in **United India Insurance Company Limited v. Ahmadi Begum and others.**

07. Admittedly, the claimant was travelling as an inmate of the Jeep, which is covered under Ex.B.1 – 'Act policy'. R.W.1 in his evidence asserted that Ex.B.1 will not cover the risk of inmates of the Jeep. He further asserted that the said Jeep is a private vehicle, and it cannot be used as hire carrier. The policy covers the risk from 22.10.1999 to 21.10.2000, and an amount of Rs.603/- was collected towards premium for driver and for third party property damage, apart from Rs.29/- for service tax.

08. Relying on the decision of the Apex Court reported in **National Insurance Company Limited v. Swaran Singh,** the Tribunal held that the second respondent - insurance company was also liable to pay the compensation. I n **United India Insurance Company Limited v. Ahmadi Begum and others** this Court, relying on the Judgments of another learned Single Judge in **New India Assurance Company Limited** referred supra (1) held that if a private vehicle is allowed to carry persons other than the owner or driver as per certificate of registration, all such persons come within the expression of 'third party'. The Tribunal held that since the policy covers the third party risk, the insurance company was liable for payment of compensation.

09. The learned counsel for the appellant contended that the learned Single Judge's attention was not drawn to the Division Bench decision of this Court reported in **Branch Manager, United India Insurance Co. Ltd., Kamareddy, Nizamabad District v. Kondakotla Saroja and others.** In the said decision, it was held that whether it is a Comprehensive policy or an Act policy, the insurer is not liable where the policy does not cover the risk of the owner treating him as third party, unless it is specifically agreed that separate premium is paid covering the risk of third parties. In a recent judgment reported in **National Insurance Company Limited v. Balakrishnan and another**, the Apex Court held that there is distinction between Act policy/ comprehensive policy/ package policy. Following the decision reported in **United India Insurance Company Limited v. Tilak Singh,** the Apex Court further

held that ‘Act policy’ does not cover the risk of third party. In the instant case, the claimant/ petitioner was an occupant of a private jeep, having the capacity of 10 persons and covered by an ‘Act policy’. Merely because the Jeep can carry 10 persons, unless extra premium is paid covering the inmates of the Jeep, the insurance company cannot be held liable on the basis of an ‘Act policy’. In the circumstances, the award of the Tribunal holding that the insurance company is also jointly liable along with the owner of the vehicle has to be set aside and is accordingly set aside.

10. With regard to the award of just compensation, in the light of the cross-objections filed by the claimant, it is to be noticed that the accident was alleged to have occurred on 05.07.2000 and he was treated as an inpatient in the Government Hospital, Nizamabad from 05.07.2000 to 12.07.2000, thereafter he was shifted to Yashoda Hospital on 12.07.2000 and was discharged on 17.07.2000. With regard to the admission and discharge in the Yashoda hospital, there is no dispute. But as per Ex.C.8 which was filed by the claimant, he was admitted in Nizam Institute of Medical Sciences on 25.09.2001, surgery was conducted on 27.09.2001 and was discharged on 15.10.2001. The petitioner filed Ex.C.11, which is an out patient record issued by the Nizam Institute of Medical Sciences. It shows the date of admission as 18.07.2000, and performance of surgery on 25.07.2000. Thus there is inconsistency with regard to treatment. A certificate was issued by the Civil Assistant Surgeon, Government Hospital, Nizamabad, stating that due to the accident, the petitioner has sustained spinal injury.

11. The Tribunal considered the annual income of the petitioner as Rs.81,000/- without any basis. None were examined with regard to pahanies and Form 20 income tax return for the year 2000-01. There is no evidence to show whether he was a regular income tax payee or return was filed only for that year.

12. In the absence of acceptable documentary evidence, the Tribunal erred in taking the annual income at 81,000/-. Similarly, the Tribunal has taken the functional disability as 70% without any basis, when P.W.2 deposed that the petitioner suffered 100% disability. In view of the doubtful nature of the annual income, I am not inclined

to enhance the loss of income and loss of future earnings, though it was urged by the learned counsel for the cross-objectors that as per II schedule of the Act, the Tribunal erred in applying multiplier of 17 to a person aged about 22 years and it should be 18. The amount of Rs.51,212/- awarded towards medical expenditure, and the amount of Rs.2,00,000/- awarded towards loss of chance of marriage and loss of amenities do not warrant any enhancement.

13. In view of the above discussion, the award passed by the Tribunal in O.P. 1141 of 2000 is hereby confirmed but the finding on liability of the insurance company is set aside and the cross- objections filed by the claimants are dismissed.

14. It is submitted by the learned counsel for the appellant that pursuant to the order of this Court dated 27.06.2003, the claimant withdrew half of the amount, which was deposited by them vide orders dt.15.04.2003 in C.M.P. No.8871 of 2003.

15. In the circumstances, it is left open to the claimant to recover the balance amount from the owner of the vehicle only. Similarly, the appellant/ insurance company is also entitled to recover the amount, which was withdrawn by the claimant, pursuant to the interim order, from the owner of the vehicle without there being any separate petition for recovery, by filing an execution petition.

16. In the result, the appeal is allowed and the cross-objections are dismissed.

17. Miscellaneous petitions, if any, pending in this appeal as well as cross objections, shall stand closed.

A. RAMALINGESWARA RAO, J

Date:03.12.2015

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