THE HON'BLE MRS JUSTICE ANIS

M.A.C.M.A.NO.1360 OF 2005

JUDGMENT:

1) This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award, dated 07.10.2005 passed by the I Additional District Judge-cum-Chairman, Motor Vehicle Accident Claims Tribunal, Guntur, in M.V.O.P.No.1107 of 1999 awarding compensation of Rs.2,63,478/-.

2) The appellant/petitioner filed the above M.V.O.P., under Section 166 of the Act claiming compensation of Rs.5,00,000/-, for the injuries sustained by him in the accident that occurred on 06.04.1999.

3) The brief averments made in the petition are that the appellant/petitioner was working as a Driver of the lorry bearing No.AP 37T 164 of the 1st respondent. On 06.04.1999 at about 4.00 p.m., he was coming to the Mirchiyard on the bypass road with the second driver Rama Mohanarao and Cleaner. When it reached Manasa Sarovaram, one lorry came in the opposite direction and dashed against his lorry and as a result, he lost control and dashed against another lorry coming in the opposite direction. Due to the accident, the appellant/petitioner, 2nd driver and the Cleaner received multiple injuries and the Cleaner died on the spot. The second driver died while undergoing treatment. The appellant/petitioner received grievous injuries including the fracture of left femur, left ankle, ribs, both bones of right leg and other multiple injuries. The police registered a case in Cr.No.48/1999. The appellant/petitioner stated that due to the accident, he permanently became a disabled person. Therefore, respondent Nos.1 to 4 are jointly liable to pay the compensation.

4) Before the Tribunal, respondent Nos.1 and 3 remained exparte.

5) The second respondent-Insurance Company filed the counter denying the claim of the appellant/petitioner and that it is not liable to pay any compensation to the appellant/petitioner for the injuries sustained by him and the treatment taken by him. The respondent specifically stated that, in the petition, it is clearly mentioned that the accident took place due to the negligent driving of the appellant/petitioner and as such, the second respondent is not liable to pay any compensation to the appellant/petitioner.

6) In the counter affidavit filed by the fourth respondent it is clearly stated that the accident took place due to the rash and negligent driving of the appellant/petitioner himself, who drove the vehicle bearing No.AP 37T 164 and as such, the fourth respondent is not liable to pay compensation to him and prayed to dismiss the petition.

7) Basing on the pleadings, the Tribunal framed three issues and to substantiate his claim, the appellant/petitioner got examined PWs.1 to 9 and got marked Exs.A-1 to A-23 and X-1 to X-8. On behalf of the respondents, no oral evidence was adduced, but the copy of the policy was marked as Ex.B-1, with consent.

8) The Tribunal having considered the oral and documentary evidence on record, held that the accident occurred due to the rash and negligent driving of the appellant/petitioner himself in driving the lorry AP37T 164 belonging to the first respondent, due to which, he received injuries and awarded compensation of Rs.2,63,478/- against the first respondent, who is the owner of the vehicle and dismissed the claim of the appellant/petitioner against respondent Nos.2 to 4. Aggrieved by the award of the Tribunal, the appellant/petitioner filed the present appeal.

9) The learned counsel appearing for the appellant/petitioner argued that the Tribunal has awarded meagre compensation to the appellant/petitioner, though he sustained grievous injuries. Therefore, the award passed by the Tribunal is not sustainable. The learned

counsel further contended that the Tribunal without considering the evidence on record did not grant any compensation against respondent Nos.2 to 4. It is also argued that the compensation awarded by the Tribunal is very less and prayed to enhance the compensation against respondent Nos.2 to 4 also, who are jointly liable to pay the compensation. The learned counsel also argued that the petition filed by the appellant/petitioner is under Section 166 of the Motor Vehicles Act. He also argued that as per Section 167 of the Motor Vehicles Act, the appellant/petitioner can approach the Tribunal, claiming compensation and he is given option to file an application seeking compensation either under the provisions of the Motor Vehicles Act or under Workmen's Compensation. In support of his claim, he relied on a decision reported in **ADHIKARALA JAGADEESWARA RAO VS. GOPALA KRISHNA TRANSPORT, VISAKHAPATNAM AND OTHERS** wherein this Court held as follows:

30. "For the foregoing discussion, it is evident that normally the Insurance Company cannot contest the claim on the grounds other than the grounds mentioned in Section 149(2) of M.V. Act without obtaining leave of the Court in writing. But if the claimant obtained an award by playing fraud on the Court in collusion with the insured, it is open to insurer to apply to the Tribunal for rectification of the award even on merits. In this case the issue raised by the Counsel for the respondent is that whether the compensation awarded by the Tribunal should be apportioned between the insurance company with which the vehicle dashed the other vehicle due to rash and negligent driving of its driver and the insurance company with which the driver of the other vehicle received the injuries, since the employer is under an obligation to pay compensation to his employee under Workmen's Compensation Act apart from other question whether the Tribunal under M.V. Act is empowered to entertain a claim under Workmen's Compensation Act also in view of the conflicting decisions on the issue. After giving my considered thought, to obviate any future difficulty, I directed the Insurance Company to seek leave of the Court in writing and granted leave to the Insurance Company to raise these issues. Hence, the objection raised by Mr. N.V. Jagannadh holds no water and it is accordingly rejected.

Issue No. IV :

31. To answer this question we have to look at the provisions of the Motor Vehicles Act. Chapter XI of the Motor Vehicles Act deals with Insurance of Motor Vehicles against third party risks. Section 145 deals with the definitions. The Legislature made insurance of the vehicles compulsory to protect the interests of the successful claimant from being defeated by the owner of the vehicle who has no enough means to meet his liability. Section 146(1) deals with the class of vehicles that are required to take Insurance policy compulsorily and Section 146(2) deals with the class of vehicles that are exempted from obtaining an Insurance Policy. Section 147(1) deals with the issuance of Insurance policy and the persons or classes of persons covered under the policy to the extent specified. Section 147(I)(b)(i) covers the liability of the insured, which may be incurred by him in respect of death or bodily injury to any person including the owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of vehicle in a public place (ii) any liability to any passenger of public service vehicle caused by or arising out of the use of the vehicle in a public place. As per the 1st proviso to Section 147(4)(b) of the Act, the liability of the insurer under the policy issued under Section 147 of M.V. Act no policy is required in respect of death or bodily injury sustained by categories of employees mentioned therein in the course of their employment under Workmen's Compensation Act (a) the driver of the vehicle (b) if it is a public service vehicle the Conductor and Examiner in examining the tickets on the vehicle (c) if it is a goods carriage being carried in the vehicle or to cover any party on the contracted liability under second proviso. Under sub-section (2) the Insurance Company shall cover any liability incurred in respect of any accident (b) in respect of damage to any property of a third party up to Rs. 6000/- Under sub-clause (5) the insurer is liable to indemnify the person or classes of persons specified in the policy in respect of any liability and this provision was given overriding effect over any other provision contained in any law for the time being in force. From this it is seen that under the policy issued under Section 147 of Motor Vehicles Act that the employees like drivers, cleaners, ticket examiners working on the vehicles are entitled to receive compensation on account of accident arising out of the use of a motor vehicle in a public place both under the provisions of M.V. Act as well as the Workmen's Compensation Act if the accident has taken place during the course of employment without obtaining a separate policy for the coverage under Workmen's Compensation Act. Under Section 149 of the Motor Vehicles Act, the victims of the motor vehicles are to be fully compensated and fully protected by the owner of the vehicle since he is having vicarious liability to compensate the

> victim as well as his own employee under Workmen's Compensation Act, when his vehicle is covered by the Insurance Policy as contemplated under Section 146 of the Act a duty is cast on the insurer issuing policy to satisfy the decree to the extent of assured sum. Under Section 167 of the M.V. Act where the death of or bodily injury to, any person gives raise to a claim for compensation under the Motor Vehicles Act as well as Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. To put it aptly a person entitled to claim compensation under the provisions of the Motor Vehicles Act as well as Workmen's Compensation Act, 1923 is given option to file application seeking compensation either under the provisions of the M.V. Act or under Workmen's Compensation Act but not in both the forums".

10) On the other hand, the learned counsel for the second respondent vehemently opposed for granting of compensation against the Insurance Company on the ground that the Tribunal after considering the evidence rightly held that the accident occurred due to the rash and negligent driving of the appellant/petitioner himself, due to which, the appellant/petitioner received injuries and as the appellant/petitioner is not a third party and Ex.B-1 copy of the policy is covering the third party risk, the Tribunal after considering the documentary evidence in Exs.A-1 and A-2 held that the petitioner is not entitled to claim compensation against the second respondent. Such a finding of the Tribunal needs no interference and prayed to dismiss the appeal.

11) The learned counsel for the fourth respondent contended that the Tribunal awarded compensation basing on the fact that the first respondent-owner of the vehicle bearing No.AP37T 164 is liable to pay compensation to the appellant/petitioner as he was working under him at the time of the accident and excluded the liability of the 4th respondent and the appellant/petitioner is not entitled to claim any compensation against the 4th respondent. Therefore, the finding of the Tribunal needs no interference and prayed to dismiss the appeal.

12) 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:

1. Whether the compensation awarded by the Tribunal is just and reasonable?

2. Whether the appellant/petitioner is entitled for enhancement of compensation as prayed for?

13) **<u>P O I N T S:</u>** A perusal of the evidence on record shows that there is a finding of the Tribunal that the deceased died in the motor vehicle accident, in which the lorry bearing No.AP 37T 164 was involved.

14) The oral and documentary evidence adduced by the appellant/petitioner shows that on 06.04.1999 he was driving the lorry bearing No.AP 37T 164 belonging to the first respondent and the same met with an accident and the police registered a case in Cr.No.48/99. To prove the oral evidence, the appellant/petitioner filed Ex.A-1 Certified copy of the F.I.R., and Ex.A-2 Certified copy of the Charge sheet. Perusal of the documentary evidence clearly establishes that immediately after the accident, the police registered a case against the appellant/petitioner, who drove the vehicle in a rash and negligent manner and filed the charge sheet against the appellant/petitioner for the rash and negligent driving. In the cross examination PW-1 admitted that the police registered a criminal case against him.

15) The Tribunal after considering the evidence of PW-1 and Exs.A-1 and A-2 rightly gave a finding that the accident occurred due to the rash and negligent driving of the appellant/petitioner himself. There is no dispute that in the accident, the appellant/petitioner sustained two fractures and two simple injuries and 20% disability. After considering the evidence of the Doctors PWs.3, 5, 6 and 8, the Tribunal assessed the compensation, and held that the appellant/petitioner is entitled to Rs.2,63,478/-.

16) The main contention of the appellant/petitioner is that the finding

of the tribunal that respondent Nos.2 to 4 are not liable to pay compensation has to be set aside, because the appellant/petitioner was working under the first respondent and the vehicle belonging to the first respondent was insured with the second respondent. Therefore, the second respondent is also liable to pay compensation to the appellant/petitioner.

17) Ex.B-1 policy is covering third party risk. As the appellant/petitioner is working as a Driver of the first respondent, he cannot be termed as a third party. Therefore, the Tribunal after considering the evidence of PW-1, rightly held that the appellant/petitioner is not entitled to claim compensation from the second respondent-Insurance Company, as the accident occurred due to the rash and negligent driving of the appellant/petitioner himself and awarded compensation against the first respondent, who is the owner of the vehicle. There is no evidence on record on behalf of the appellant/petitioner to prove that the respondent Nos. 2 to 4 are also liable to pay compensation to the appellant/petitioner. Further, the appellant/petitioner has not made out any case to interfere with the quantum of compensation awarded by the Tribunal.

18) The said finding of the Tribunal awarding quantum of compensation of Rs.2,63,478/- to the appellant/petitioner needs no interference, since the appellant/petitioner has not made out any ground for enhancement of compensation.

19) Accordingly, the appeal is dismissed. Miscellaneous petitions, if any, pending in this appeal shall stand closed. No order as to costs.

ANIS, J

Dt.30.10.2015

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THE HON'BLE MRS JUSTICE ANIS

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