

**IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

MACMA No.876 of 2009

Between:

Bhukya Somulu

..Petitioner

And

1. Ch. Srivani and another
Respondents

..

DATE OF JUDGMENT PRONOUNCED: **10.06.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes
/ No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes
/ No
3. Whether Their Lordship wish to
see the fair copy of the Judgment?
Yes / No

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

M.A.C.M.A. No.876 of 2009

JUDGMENT:

Challenging the Award dated 25.09.2008 in M.V.O.P.No.167 of 2005 passed by the Chairman, MACT-cum- X Additional District Judge, Krishna (for short “the Tribunal”), the claimant preferred the instant M.A.C.M.A.

2) The factual matrix of the case is thus:

a) The claimant is an agricultural coolie. On the morning of 02-05-2001, the claimant and his villagers went to Tamirisa village for collecting the coolie charges. On that night at about 10.00 PM he and his villagers boarded a lorry bearing No. AP 16 U 6872 at by-pass road in Gudivada to go to Mandavalli Brich bundles. When they reached the outskirts of Mandavalli, the driver of the offending vehicle drove the vehicle in a rash and negligent manner and thereby the vehicle turned turtle and as a result, the claimant and others sustained injuries. It is averred that the lorry driver was responsible for the accident. On these

pleas, the claimant filed M.V.O.P.No. 167 of 2005 under Section 163-A of Motor Vehicles Act, 1989 against the respondent Nos. 1 and 2 i.e., owner and insurer of the offending vehicle and claimed Rs.75,000/- as compensation.

(b) The claim against the first respondent/owner was dismissed by the Tribunal since the claimant failed to take steps to serve notice on the first respondent.

(c) Second respondent/insurance company contested the matter on the ground that the claimant was a gratuitous passenger in the goods vehicle and hence his risk is not covered under the terms of the policy.

(d) During the course of trial, PW.1 was examined and Exs. A.1 to 3 were marked on behalf of the claimant. RW.1 was examined and Ex. B.1---Policy was marked on behalf of the second respondent.

(e) The Award dated 25-09-2008 shows that though the Tribunal came to a conclusion in respect of Issue No.1 to the effect that the accident was occurred due to negligence of the driver of the lorry, however, dismissed the claim of the claimant on the ground that he was travelling in the goods vehicle as a gratuitous passenger and therefore no liability can be fastened on the second respondent/insurance company and further in this case,

the claimant has not taken steps against the first respondent/owner without whose presence insurer cannot be fastened with liability.

Hence, the appeal.

3) Heard arguments of Sri Y. Ramatirtha, learned counsel for appellant and Sri K. Sitaram, learned counsel for the respondent No.2. Notice to R1 was unserved.

4) Impugning the Award, the learned counsel for the appellant/claimant would submit that the Tribunal erred in dismissing the claim against the first respondent/owner for the mere reason that no steps were taken and thereby the valuable right of the poor, uneducated and injured claimant was effected and therefore, an opportunity may be given to the claimant/appellant to take steps against the first respondent to bring him on record and proceed with the matter. He submitted a decision of Division Bench of this Court in ***Peddaboina Laxmi and others v. Lamba Road Lines, Secunderabad and another***^[1] to impress upon this Court that under similar circumstances, this Court allowed the appeal and remanded the matter back to the Tribunal for fresh disposal.

5) Per contra, the learned counsel for Insurance

Company submitted that the claimant travelled in the goods vehicle as a gratuitous passenger and as such, no liability can be fastened on the Insurance Company and the Tribunal rightly exempted the second respondent/insurance company from the liability and even if the matter is remanded to the Tribunal, the said finding may not be disturbed.

6) In the light of the above rival arguments, the point for determination is:

“ Whether there are merits in this appeal to allow?

7) A perusal of the impugned Award would show that the Tribunal dismissed the claim of the petitioner/claimant on the ground that the claimant has not taken steps against the first respondent/owner against whom the claim was dismissed long back on 30-11-2006 and secondly, that the claimant travelled in the goods vehicle as a gratuitous passenger and therefore, no liability can be fastened on the second respondent.

8) I have gone through the cited judgment. In that case, the claimants have not taken summons against the first respondent/owner and hence, the claim was dismissed against him. However, the Tribunal awarded compensation against the second respondent/insurance company. Challenging the same, the insurance

company preferred the appeal before the High Court with the argument that in the absence of the insured, the Insurance Company cannot be fastened with the liability. The Hon'ble Division Bench of this Court though agreed with this argument, but considering the plight of the L.Rs of the deceased held that they have an option under Order 9 Rule 4 CPC either to file a fresh claim petition or file an application for setting aside the order of the dismissal. Ultimately, the Hon'ble Division Bench of this Court set aside the Order of the Tribunal as well as the Order of the learned Single Judge of this Court in CMA, who allowed the appeal filed by the Insurance Company as there was no representation for the claimants. The Hon'ble Division Bench ultimately reversed the Judgment of the Tribunal and remanded the matter back to the Tribunal for fresh disposal by following the procedure under Order 9 Rule 4 C.P.C.

9) In the instant case also, this Court is of the considered view that it is a fit case to set aside the Judgment of the Tribunal and to remand the matter back to the Tribunal for fresh disposal according to law, considering the fact that the appellant/claimant is a poor, uneducated and injured in the accident.

10) In the result, this M.A.C.M.A is allowed and the Award dated 25-09-2008 passed by the Tribunal is set

aside and the matter is remanded back to the Tribunal with a direction to the Tribunal to give an opportunity to the claimant to bring on record the first respondent/owner and allow both the respondents to contest the matter and dispose of the matter afresh as per law.

As a sequel, miscellaneous petitions pending if any shall stand closed.

U. DURGA PRASAD RAO, J

Date: 10.06.2015
eha

[\[1\]](#) 2002 (6) ALD 132 (DB)