

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.1051 of 2005

JUDGMENT:

The United India Insurance Company Limited, who is respondent No.6 in M.V.O.P.No.431 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Khammam (for short, 'the Tribunal'), is the present appellant. Aggrieved with the order dated 16.12.2004, the Insurance Company preferred the instant appeal challenging the grant of compensation of Rs.2,89,400/- with interest at 9% per annum for the injuries sustained by the petitioner in a road accident fastening liability on it, despite the evidence definitely indicating that there was rash and negligent driving of the RTC bus driver also.

2. Respondent No.1 herein is the petitioner, while respondent Nos.2 to 6 herein and the appellant, who are the driver and owner of the RTC bus, and cleaner, driver and insurer of the lorry, respectively, were the respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 21.05.2000, the petitioner, working as Forest Guard, under instructions of his superior officer went to Research Range, Kesamudram-III for taking grafts to the range and since the Forest Range Officer could not hand over the grafts to the petitioner as they were not available, he boarded RTC bus bearing registration No.AP 10Z 6095 to go to Amaravaram at about 5-10 a.m. bound to Bhadrachalam and when the bus reached Petrol Bunk, Konijerla at about 5-40 a.m., while the petitioner was sitting on the right side of the bus towards window side and rested his right forearm on

the window without projecting the hand outside, still, due to rash and negligent driving of the driver of the lorry bearing registration No.AHP 5643 coming in the opposite direction dashed the right side of the bus and as a consequence his right hand severed at shoulder level and fell on the road. Therefore, he laid claim for grant of Rs.5,00,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') against respondent Nos.1 to 6, who are the driver and owner of the RTC bus and cleaner, driver and insurer of the lorry respectively.

5. Before the Tribunal, respondent Nos.3 to 5 remained *ex parte*. Respondent Nos.1, 2 and 6 filed their respective counters raising various pleas. The 6th respondent has taken a specific plea that the cleaner was actually driving the RTC bus at the relevant time, whereas the driver was resting and the cleaner was not possessing a valid driving licence and further that there was rash and negligent driving on the part of the RTC bus driver occasioning the accident, and, therefore, sought to dismiss the claim against it.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the accident took place due to rash and negligent driving of the driver of the APSRTC Bus bearing No.AP 10Z 6095?

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

3. To what relief?"

7. During enquiry, the petitioner examined himself as P.W.1 besides marking Exs.A.1 to A.10; whereas, on behalf of respondent No.6, Senior Assistant from its local branch was examined as R.W.1 and

marked a copy of insurance policy as Ex.B.1.

8. The Tribunal having referred to the evidence of P.W.1 and even making observation in paragraph-8 of the order that P.W.1 in his chief-examination has stated that he sat on the fifth seat of the bus from its front, but the accident occurred due to rashness and negligence of respondent Nos.1 and 3 and even in the middle of the paragraph-8, the assertion was made by the petitioner to the effect that the accident occurred due to the negligence of the drivers of RTC bus and lorry, still, the Tribunal overlooking the said assertions, attributed rash and negligent driving to the driver of the lorry, while concluding the discussion on issue No.1.

9. The reasons assigned by the Tribunal appear to be not convincing. In fact, the Tribunal ought to have insisted the petitioner to file the scene of occurrence panchanama and the sketch of scene of occurrence. In the absence of scene of occurrence panchanama and the sketch map, it would be difficult to arrive at a definite conclusion, more particularly, when P.W.1 asserts in his chief-examination attributing negligent driving to the drivers of both vehicles. This apart, the Tribunal has overlooked the fact that the specific plea taken by the 6th respondent-Insurance Company, which is appellant herein, the violation as regards the cleaner driving the lorry at the relevant time without possessing valid driving licence, whereas, the driver was resting. Relevant issue was not framed by the Tribunal touching the said violation complained by the Insurance Company. That has been the approach of the Tribunal which really warrants interference at this stage. On account of which, the Insurance Company in case succeeds in establishing that the cleaner did really drive the lorry at the relevant time without possessing valid driving licence, certainly, no liability can be fastened on the Insurance Company. In that view of the matter, it is

desirable to remit the matter to the Tribunal for disposal affording a chance to the parties to file the scene of occurrence panchanama and the sketch map drawn by the police concerned and also to frame necessary issue touching the violation mentioned by the 6th respondent-Insurance Company and to adjudicate upon all the issues and tender findings on appreciation of evidence already on record and the evidence that would be let in by the respective parties further, both, oral and documentary. The Tribunal is also directed to dispose of the matter within a period of six months from the date of receipt of the order.

10. It is represented by the learned counsel for the appellant that as directed by this Court, 50% of the compensation was already deposited and it is also represented by the learned counsel for the claimants that the amount was also withdrawn since liberty was given. However, with regard to the amount deposited by the Insurance Company and withdrawn by the claimants, the Tribunal is at liberty to give suitable directions depending on the result in the original petition.

11. Accordingly, the instant appeal is allowed setting aside the impugned order passed by the Tribunal, by remitting the matter to the Tribunal with the above directions and observations. There shall be no order as to costs.

12. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

20th March, 2015

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