THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.307 OF 2009

JUDGMENT:

This appeal is preferred by the appellant/respondent No.2 challenging the judgment and award, dated 08.09.2008, passed in M.O.P.No.441 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IX Additional District and Sessions Judge (Fast Track Court), Visakhapatnam (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 14.09.2003, the petitioner and others were engaged as coolies in the lorry bearing registration No.AP 31W 9869 for loading and unloading of the quarry material. When the lorry reached near Endada on NH No.5, the driver of the lorry drove it in a rash and negligent manner and dashed against the auto bearing registration No.AP 31X 0572. The accident occurred due to rash and negligent driving of the driver of the lorry, against whom the Station House Officer, III Town Police Station registered a case in Crime No.149 of 2003 for the offences punishable under Sections 337 and 338 I.P.C. Due to accident, the petitioner sustained grievous injuries and took treatment as inpatient for long time and spent huge amount towards medicines and treatment. Due to injuries, the petitioner could not attend to his work and thereby lost his income. Respondent No.1 is the owner of the lorry bearing No.AP 31W 9869, which was insured with the 2nd respondent – Insurance Company, as on the date of the accident. Therefore, respondents 1 and 2 are jointly and severally liable to pay compensation of Rs.1,00,000/- to the petitioner.

4. Respondent No.1 remained *ex parte.*

5. Respondent No.2 filed counter denying all the averments made in the petition *inter alia* contending that by the time of the accident, the petitioner and others were travelling in the lorry as gratuitous passengers. The accident occurred due to rash and negligent driving of the driver of the lorry. The present appeal is not maintainable for not impleading the driver, owner and insurer of the auto. The amount of compensation claimed by the petitioner under various heads is highly

excessive and exorbitant. Hence, the petition may be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

i) Whether the accident occurred on account of the rash and negligent driving of the vehicle bearing No.AP 31W 9869 by its driver and whether it resulted in injuries to the victim?

ii) Whether the petitioner is entitled to compensation, if so to what amount?

iii. Which of the respondents are liable to pay the compensation?

iv. To what relief?

7. During the course of trial, on behalf of the petitioner, PW.1 was examined and Exs.A.1 to A.6 were marked. On behalf of the respondents, RW.1 was examined and the copy of the insurance policy was marked as Ex.B1.

8. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry, which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.15,000/- with interest at 7.5% per annum from the date of petition till the date of deposit.

9. Feeling aggrieved by the judgment and award of the Tribunal, respondent No.2 – Insurance Company preferred the present appeal.

10. Heard Sri Katta Laxmi Prasad, the learned Standing Counsel for respondent No.2. The petitioner/claimant having received the notices did not choose to appear before the Tribunal.

11. The contention of the learned counsel for respondent No.2 is two fold (i) The Tribunal committed error while arriving at a conclusion that respondent No.1 has not paid premium covering the risk of coolies ought not to have fastened the liability on respondent No.2. (ii) There is no contractual obligation on the part of respondent No.2 to indemnify the liability of respondent No.1 in the absence of payment of extra premium covering the risk of coolies. Viewed from this angle also, respondent No.2 is not liable to pay compensation.

12. Now the point that arises for consideration in this appeal is:

> Whether the Tribunal has committed error while fastening the liability on respondent No.2?

13. ***Point***:- Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the lorry, which resulted injuries to the petitioner and awarded compensation of Rs.15,000/- to him. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. The amount of compensation awarded by the Tribunal is just and reasonable to meet the ends of justice.

14. The oral testimony of RW.1 coupled with Ex.B1 clearly reveals that the crime vehicle was insured with respondent No.2 – insurance company, as on the date of the accident. As per the testimony of RW.1, respondent No.1 has not paid extra premium covering the risk of coolies. A perusal of Ex.B1 – copy of insurance policy, clearly reveals that respondent No.1 has not paid the premium covering the risk of the coolies. Section 147 of the Motor Vehicles Act mandates that the Insurance Policy must cover the risk of the third party. The petitioner herein would not fall within the definition of the third party. The liability of the Insurance Policy is either statutory or contractual. So far as the statutory liability is concerned, the insurer has to pay compensation to the victims of the road accidents. So far as the contractual liability is concerned, the insurer is liable to pay compensation as per the terms and conditions of the insurance policy to the extent of extra premium paid by the insured specifying the persons covered. In the instant case, as observed earlier, the insured i.e., respondent No.1 has not paid extra premium covering the risk of coolies engaged in the lorry. The Tribunal also arrived at a conclusion that Ex.B1 – insurance policy, does not cover the risk of the coolies. Therefore, there is no statutory or contractual obligation on the part of respondent No.2 to indemnify the liability of respondent No.1. Viewed from any angle, the finding of the Tribunal that respondent No.2 has to pay compensation to the petitioner is not sustainable.

15. Having regard to the facts and circumstances of the case, the finding of the Tribunal that respondent No.2 has to pay compensation to the petitioner is not

sustainable and the said finding is liable to be set aside. Respondent No.1 alone is liable to pay compensation to the petitioner. If the petitioner has already withdrawn the amount deposited before the Tribunal, respondent No.2 is not entitled to recovery of the same from the petitioner. However, they are at liberty to recover the same from the insured.

16. In the result, the appeal is allowed in part and respondent No.1 alone is directed to pay compensation of Rs.15,000/- with interest at 7.5% per annum from the date of petition till the date of deposit. If the petitioner had already withdrawn the amount deposited before the Tribunal, respondent No.2 is at liberty to recover the same from respondent No.1. There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date:21.04.2015

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