IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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M.A. C.M.A. No.1333 of 2005

Between:

Divisional Manager, National Insurance Co. Ltd.

… Appellant(s)

and

Kalidindi Venkata Ramana Vadayar

… Respondent(s)

DATE OF JUDGMENT PRONOUNCED: **16th July 2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SMT JUSTICE ANIS

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 Reports/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

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The HON'BLE SMT JUSTICE ANIS

M.A. C.M.A. No.1333 of 2005

J U D G M E N T :

This appeal is filed by the appellant/respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'),aggrieved by the Judgment and Decree dated 08.02.2005, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum- III Additional District Judge(Fast Track Court), Bhimavaram in O.P.No.533 of 2003, awarding compensation of Rs.35,000/-.

2. The respondent/claimant filed the above O.P under Sections 163A and 166 of the Act, claiming compensation of Rs.1,00,000/- for the injuries sustained by him in a motor vehicle accident, that occurred on 17.10.2002.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 17.10.2002 at about 10.30 p.m., while the petitioner was driving auto bearing No.AP 37 U 9699 from Peravali side to Nidadavolu side with passengers and when he reached near D.Muppavaram Centre, he noticed one quarry lorry coming in opposite direction and to avoid accident he went to the extreme left side of the road, due to which the auto turned turtle in which the petitioner sustained grievous injuries. Petitioner is the owner cum driver of the auto. The police registered a case against the petitioner under Sections 304-A, 337 IPC and he was shifted to Rajahmundry General Hospital for treatment and there he undergone treatment by spending huge amounts. Subsequently, police referred the case as mistake of fact as there is no negligence on the part of the petitioner. Petitioner stated that he was hale and healthy prior to the accident and earning Rs.3,000/- per month. Therefore, prayed the Court to grant compensation of Rs.1,00,000/- against the sole respondent.

5. The brief averments made in the written statement filed by the sole respondent are as follows :

The respondent put the petitioner to prove the manner of the accident, the age and income of the petitioner. However, stated that petitioner was driver-cum-owner of the auto and due to his rash and negligent driving, the accident was occurred, and as such, the respondent is not liable to pay any compensation. Further, as per the terms and conditions of the insurance policy, it is covered only for the risk of third parties. Since the petitioner is not a third party and he is the owner of the vehicle, the insurance company is not liable to pay any compensation and prayed to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined himself as P.W.1 and also examined PWs2 and 3 and got marked Exs.A1 to A5 on his behalf. On behalf of the respondent-insurance company, RW1 was examined and Ex.B1 insurance policy was marked.

7. After considering the oral and documentary evidence on record, the Tribunal held that petitioner sustained injuries in the accident while driving the auto and awarded compensation of Rs.35,000/- along with interest @ 9% per annum to the petitioner.

8. Aggrieved by the order of the Tribunal, the insurance company preferred the present appeal.

9. The learned counsel appearing for the appellant/ insurance company argued that that the Tribunal erred in granting compensation because the petitioner is not a third party, but he is the driver-cum-owner of the vehicle and his risk is not covered as per the terms and conditions of the insurance policy. In support of his contention he relied upon the judgment of the ***Dhanraj v. New India Assurance Co., Ltd. and another***[1] wherein it was held that:

> "In this case, it ha snot been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4,989/- paid under the heading "own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear

> that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance."

10. It is further argued that the Tribunal without considering all these aspects fixed the liability on the respondent. It is also stated that the claimant already withdrawn Rs.17,500/- and for the balance amount, the appeal may be allowed holding the insurance company not liable to pay the balance amount.

11. On the other hand, the learned counsel for the respondent/claimant argued that the Tribunal after considering the evidence on record awarded meagre compensation and that the contention of the appellant that the claimant is not entitled to any compensation is not tenable and prayed to dismiss the appeal.

12. Having regard to the submissions made by the learned counsel for the appellant, the only point which is to be decided in this appeal is as follows:

> ***Whether the appellant had made out any case to set aside the award of the Tribunal?***

13. **POINT:** A perusal of the evidence produced by the petitioner shows that petitioner is the injured person who drove the auto on the date of accident and met with accident in which he sustained injury and admitted in Rajahmundry General Hospital. Though, police initially registered the case against the petitioner, but subsequently, they referred the case as mistake of fact as there is no negligence on the part of the petitioner. Therefore, the finding of the Tribunal in that regard needs no interference.

14. Coming to the quantum of compensation, the Tribunal after considering the evidence of PW1 and the Doctor, PW3, granted

Rs.10,000/- towards transportation and medical expenses; Rs.5,000/- towards pain & suffering and mental agony, and Rs.20,000/- towards loss of amenities and thus, total amount of Rs.35,000/- was awarded to the petitioner, which is also since not disputed, needs no interference by this Court.

15. The main contention of the appellant counsel in this appeal is that policy under Ex.B1 is covered only for the risk of a third party, and since the petitioner is driver-cum-owner of the vehicle, the policy is not covered and as such the insurance company is not liable to pay any compensation.

16. Admittedly, Ex.B1 is a comprehensive policy, which does not cover the risk of the insured/owner of the vehicle and there is no personal accident insurance to the petitioner and therefore the petitioner is not entitled to claim coverage under the policy.

17. The contention of the appellant is that since the policy not covered the risk of the claimant and that the claimant had already withdrawn Rs.17,500/-, the insurance company may be exonerated from paying the balance compensation amount. The said contention appears to be reasonable and has to be accepted.

18. Accordingly, the appeal is allowed in part holding that the appellant/insurance company is not liable to pay the balance amount of compensation. There shall be no order as to costs.

19. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J.

Date: 16.07.2015

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[1] 2005(1) ALD 51 (SC)