

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.712 OF 2009

JUDGMENT:

_____ This appeal is preferred by the appellants/respondent Nos.3 and 4 assailing the judgment and award, dated 20.03.2006 passed in M.V.O.P.No.299 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, West Godavari, Eluru (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 12.04.2000, as per the instructions of respondent No.1, the petitioner had taken the lorry bearing No.AP 5T 406 to Atapaka Village for unloading. At the time of unloading, the axle of the lorry had broken down on the road. When the petitioner and the cleaner were attending the repairing work, the live electrical wires fell on the lorry due to which, the petitioner received burn injuries. The cleaner of the lorry, who received injuries, succumbed to injuries while undergoing treatment in the hospital. Due to burn injuries, the right leg of the petitioner was amputated. In connection with the said accident, the Station House Officer, Kaikaluru Police Station, registered a case in Crime No.36 of 2000. The petitioner spent huge amount towards medicines and treatment. Due to amputation of the right leg, the petitioner could not attend to his regular work, thereby lost his income. By the time of incident, the petitioner was aged about 28 years and used to earn Rs.3,483/- per month as lorry driver. The lorry bearing No.AP-5T-406 which belongs to respondent No.1 was insured with respondent No.2 – Insurance Company as on the date of incident. Therefore, respondent Nos.1 to 4 are jointly and severally liable to pay compensation to the petitioner. _____

4. Respondent No.1 filed written statement admitting the *factum* of incident and the nature of the employment of the petitioner *inter alia* contending that the unfortunate incident had taken place due to the negligence of respondent Nos.3 and 4 for not keeping the electrical line in proper condition. At the time of unfortunate incident, the lorry was insured with respondent No.2 - Insurance Company. Therefore, respondent Nos.2 to 4 are liable to pay compensation to the petitioner.

5. Respondent No.2 filed written statement denying all the averments made in the petition *inter alia* contending that respondent Nos.3 and 4 alone are liable to pay compensation, if any, to the petitioner and this respondent is not liable to pay compensation to the petitioner. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

6. Respondent No.4 filed written statement denying all the averments made in the petition *inter alia* contending that the cleaner inadvertently came into contact with the electrical live wire, which resulted in injuries to the petitioner also. The feeder was tripped twice at sub station. The concerned A.E. sent a report to the Station House Officer, Kaikaluru and to the concerned officers on 13.04.2000. The concerned Assistant Divisional Officer, Kaikaluru sent a preliminary report to the D.E. (Operation) and to the Electrical Inspector. The live wires of the poles will be at a height of 8 meters from the ground. The cleaner, who went on the top of the cabin of lorry, which was stationed underneath the lines, touched the live wire and thereby the petitioner sustained burn injuries. There was no negligence on the part of the department at all. As such, the respondent Nos.3 and 4 are not liable to pay compensation to the petitioner. The unfortunate incident had taken place due to negligent parking the lorry underneath of the live electrical wire. Hence, the petition may be dismissed so far as these respondents are concerned.

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

(i) Whether the petitioner is entitled to claim compensation? If so, for how much amount and if the petitioner is entitled to claim compensation against all the respondents?

(ii) To what relief?

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8. During the course of trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A11 and Exs.X.1 and X.2 were marked. On behalf of the respondents, RWs.1 and 2 were examined and Exs.B.1 to B.5 were marked.

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9. Basing on the material available on record, the Tribunal arrived at a conclusion that the unfortunate incident occurred due to negligence on the part of respondent No.1 as well as respondent Nos.3 and 4, and by fixing the liability in the ratio of 50:50 respectively, allowed the petition in part by awarding compensation of Rs.5,87,548/- with interest at the rate of 7.5% per annum and directed respondent Nos.1, 3 and 4 to pay the compensation amount equally.

10. Feeling aggrieved by the judgment and award of the Tribunal, respondent Nos.3 and 4 preferred the present appeal. In the cause title, it is mentioned that respondent Nos.2 and 3 are not necessary and proper parties.

11. Heard Sri P.Anand Seshu, the learned Standing Counsel for A.P.E.P.D.C.L. – respondent Nos.3 and 4 (appellants) and Sri Veeraswamy, the learned counsel for the petitioner.

12. The contention of the learned Standing Counsel for respondent Nos.3 and 4 is two fold: (1) The Tribunal has no jurisdiction to entertain the petition, and (2) The Tribunal failed to consider the Memo, dated 09.07.2008 issued by the Eastern Power Distribution Company of A.P. Limited.

13. Per contra, the learned counsel for the petitioner submitted that the incident occurred out of the use of the motor vehicle, therefore, the Tribunal has jurisdiction to entertain the petition. He further submitted that the Memo, dated 09.07.2008 deals with ex-gratia only.

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14. Now the points that arise for consideration in this appeal are:

1. Whether the Tribunal has jurisdiction to entertain the petition or not?

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2. Whether the Memo, dated 09.07.2008 issued by the Eastern Power Distribution Company of A.P. Limited excludes the jurisdiction of the Tribunal or not?

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Point Nos.1 and 2:

15. Point Nos.1 and 2 are interlinked with each other, and hence, I am inclined to address these two points simultaneously in order to avoid repetition.

16. Respondent Nos.1 and 2 did not file appeal or cross-objections challenging the judgment and award of the Tribunal. The judgment and award passed by the Tribunal became final so far as respondent Nos.1 and 2 are concerned. For one reason or other, respondent Nos.3 and 4 (appellants) made an endorsement that respondent Nos.1 and 2 are not necessary and proper parties to this appeal.

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17. As per the testimony of PW.1, there was negligence on the part of respondent Nos.3 and 4. To demolish the stand taken by the petitioner, RWs.1 and 2 were examined on behalf of respondent Nos.3 and 4. As per the oral testimony of RWs.1 and 2, the entire incident had taken place due to the negligent act of respondent No.1 as well as the petitioner and cleaner of the lorry. As per the testimony of these two witnesses, the cleaner of the lorry himself came in contact with the live electrical wire and there was no negligence on the part of respondent Nos.3 and 4. As seen from the testimony of RWs.1 and 2,

the department had maintained the live wire intact as on the date of the alleged incident.

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18. For better appreciation of rival contentions, it is not out of place to extract the relevant portion of cross-examination of RW.2, which is as follows:

“As per electrical manual, the height of the pole for 11 KV should be 24 ft., The Department has to maintain the height of 19 ft., for 11 KV line. If a person stands on the top of the cabin, the height of the same would be 14 ft., from the ground level. If a man stretches his hand by standing on the top of the lorry, it may be around 16 ft. from the ground level. If we maintains the height of the line at 19 ft., the question of touching the live wire even by stretching the hand by a person would not arise. We have to verify the condition of the line for every 30 days. I have not produced the inspection report of the line, conducted by our department prior to the accident.”

19. If the testimony of RW.2 is taken into consideration, the department has to maintain the live electrical wire at a distance of 19 feet from ground. The fact remains that the lorry was stationed underneath of 11 KV live wire near Atapaka Village. The Tribunal considered the recitals of Exs.B.2 to B.5 in right perspective and discarded them. As per the finding recorded by the Tribunal, the live wire snapped on the lorry. If really the Electricity Department has maintained the live wire in a proper condition, the unfortunate incident might not have occurred. The material placed before the Tribunal clinchingly establishes that the live electrical wires were not at a height of 19 feet from ground as on the date of incident. If the Electricity Department has maintained the electric lines properly, there is no chance to fall the electrical live wire on the lorry. This itself clearly indicates the negligence on the part of the department. The material placed before the Court clinchingly establishes the negligence on the part of respondent Nos.1, 3 & 4.

20. Learned Counsel for respondent Nos.3 and 4 strenuously

submitted that the Tribunal has no jurisdiction to entertain the petition. It is needless to say that if any accident occurred by use of motor vehicle, the Tribunal has jurisdiction to entertain the petition. In this particular case, at the time of the incident, the petitioner and the deceased were attending the repairing work of the lorry. Unfortunately, the live electrical wire fell on the lorry due to which, the petitioner and the cleaner received burn injuries. It is needless to say that if the Court or the Tribunal has no jurisdiction to entertain the matter, the contesting respondent has to take such a plea at the earliest point of time i.e., prior to filing of the written statement or the counter. For one reason or other, respondent Nos.3 and 4 have not taken the specific plea in the written statement that the Motor Vehicles Accidents Claims Tribunal has no jurisdiction to entertain the present petition. By filing written statement, the respondent Nos.3 and 4 submitted itself to the jurisdiction of the Tribunal. No one is entitled to urge the jurisdictional aspect for the first time in the appeal without taking such a plea at the earliest point of time. Respondent Nos.3 and 4 have not produced any evidence much less legally admissible evidence to establish the Tribunal has no jurisdiction to entertain the present petition.

21. Learned counsel for respondent Nos.3 and 4 across the bar has produced the Memo issued by the Eastern Power Distribution Company of A.P. Limited, dated 22.11.2013. A perusal of the record reveals that Memo No.CGM(HRD)/GM(HRD)/DGM(IR)/PO(IR)/D.No.103/08, dated 09.07.2008 was issued for fixing the ex-gratia amount. I have carefully perused the Memo, dated 22.11.2013. There is no mention in the memo that the Tribunal has no jurisdiction to entertain this type of cases and it deals with ex-gratia only. The learned counsel for respondent Nos.3 and 4 submitted that the petition is not maintainable for non-service of notice on respondent Nos.3 and 4 prior to filing of the petition as contemplated under Section 161 of the Electricity Act. Respondent Nos.3 and 4 have not taken such a plea before the Tribunal. For the first time, learned counsel for respondent

Nos.3 and 4 came with a new plea. As observed earlier, respondent Nos.3 and 4 are not entitled to take a new plea for the first time in the appeal without taking such a plea before the Tribunal.

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22. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for respondent Nos.3 and 4 that the Tribunal has no jurisdiction to entertain the petition. The Tribunal rightly considered the oral and documentary evidence and arrived at a conclusion that respondent No.1 as well as respondent Nos.3 and 4 were equally responsible to cause the incident and apportioned the negligence in the ratio of 50% on the part of respondent No.1 and 50% on the part of respondent Nos.3 and 4. Hence, there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

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23. In the result, the Appeal is dismissed. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 02.03.2015

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