

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1100 OF 2005

AND

CROSS OBJECTION (SR) No.26957 OF 2005

IN

M.A.C.M.A. No.1100 OF 2005

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COMMON JUDGMENT:

The 2nd respondent - M/s New India Assurance Company Limited is the present appellant. Aggrieved by the order and decree, dated 31-01-2005, in M.V.O.P. No.403 of 2000, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum –

V Additional District Judge, Chittoor at Tirupati (for short 'the Tribunal'), whereby and whereunder, a sum of Rs.39,000/-(Rupees thirty nine thousand) was granted with interest at 9% per annum for the injuries sustained by the petitioner as against the claim of Rs.1,50,000/-(Rupees one lakh and fifty thousand) laid under Section 166 (1) (a) of Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred under Section 173 of the Act, seeking to exonerate the liability fastened on it by the Tribunal on the ground that the bus was hired to the 3rd respondent and it was under its control.

2. The appellant herein is 2nd respondent – Insurer in the O.P. before the Tribunal, while respondent No.1 is petitioner and respondent No.3 – Andhra Pradesh State Road Transport Corporation(APSRTC) is respondent No.3.

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

4. The facts, in brief, are that on 19-04-2000 at about 3.30 P.M., the petitioner was going on his bicycle on left side of the road from Chandragiri towards his village - Rayalapuram near Thurkapalli, during which time, a bus bearing registration No.AP 03U 3277 driven by its driver in a rash and negligent manner came and hit his bicycle, due to which, he fell down and sustained injuries on the head and all over his person. He claims that since he suffered grievous injuries, sought the aforementioned amount as compensation with interest at 18% per annum.

5. Respondent No.1, owner of the bus, remained *ex parte* before the Tribunal.

6. The 2nd respondent – Insurance Company opposed the claim, contending that since it was not a party to the hire agreement and the same was entered between the 1st and

3rd respondents, no liability can be fastened on it, as it amounts to violation of terms and conditions of insurance policy.

7. The 3rd respondent – APSRTC also opposed the claim, contending that since the bus was insured with the 2nd respondent, the 2nd respondent alone is vicariously liable to tort committed by the driver, and in turn the owner and, therefore, sought to dismiss the claim against it with costs.

8. Based on the pleadings, the Tribunal framed the following three issues about fixing responsibility for the accident.

“1. Whether the petitioner received injuries due to rash and negligent driving of the bus AP03 U 3277 by its driver?

2. Whether the petitioner is entitled for compensation, and if so, to what amount? by whom?

3. To what relief ? ”

9. During inquiry before the Tribunal, the petitioner besides examining himself as PW.1, examined Dr.Radhakrishna Reddy and Dr.Abha Chandra, who treated him, as PWs.2 and 3 respectively, and marked Exs.A-1 to A-11. On behalf of respondent Nos.2 and 3, no witnesses were examined, but, however, marked Exs.B-1 and B-2, which are copy of insurance policy and hire purchase agreement.

10. On issue No.1, the Tribunal held that due to rash and negligent driving of RTC bus, the accident has occurred and, accordingly, found the issue in favour of the petitioner.

11. On issue No.2, the Tribunal finding that Ex.A-7 was not proved since Dr. A. Sudhakar Reddy was not examined, who issued it, and further he has not treated the petitioner as per own assertion of PW.1 and basing on the evidence of other two doctors examined as PWs.2 and 3 and the nature of injuries sustained by the petitioner as reflected from Exs.A-2, A-4 and A-6, granted a sum of Rs.5,000/- towards temporary loss of earnings for one month; Rs.1,000/- each for six simple injuries and Rs.5,000/- each for three grievous and pain and suffering, making it to Rs.21,000/-; Rs.12,000/- towards medical expenses; Rs.500/- each towards transport and damage to the bicycle and, thus, a total sum of Rs.39,000/- was granted as compensation, directing the 2nd and 3rd respondents to pay the compensation, while dismissing the petition against 1st respondent.

12. It is the aforesaid order which is under challenge in the instant appeal preferred by the 2nd respondent contending in the grounds of appeal that the Tribunal was wrong in fastening liability on Insurance Company – Appellant, since there was violation of terms and conditions of the policy, as the bus was hired by the 1st respondent to the 3rd respondent without notice of the Insurance Company, and even as regards compensation, the Tribunal did not properly appreciate the

evidence. Even, the Tribunal ought to have fastened liability on the 1st respondent, which the Tribunal did not do and, therefore, sought to allow the appeal.

13. In Cross Objection (SR) No.26957 of 2005, the petitioner raised various grounds seeking enhancement of compensation, that just and reasonable compensation was not determined by the Tribunal and meager amount was awarded as compensation and, therefore, sought to grant balance amount.

14. Heard Mrs. A. Jayanthi, learned counsel for the appellant; Sri V. Sudhakar Reddy, learned counsel for the 1st respondent – petitioner; and Sri A. Rama Rao, learned Standing Counsel for the 3rd respondent - APSRTC. No representation for the 2nd respondent.

15. During the course of arguments, it is submitted by the learned counsel for the appellant that the Tribunal, somehow, dismissed the claim against the 1st respondent, owner of the bus, which was insured and hired to the 3rd respondent, and no reasons were assigned by the Tribunal in dismissing the claim petition against the 1st respondent. Similar arguments were advanced by the learned Standing Counsel for APSRTC. The learned counsel for the petitioner – 1st respondent sought to maintain the order, as it does not suffer from any infirmity except to the extent that the amount granted by the Tribunal was very meager and to enhance the same.

16. Perused the order as well as the evidence let in by the parties respectively.

17. Even a cursory glance at the order passed by the Tribunal would reflect that no reasons, leaving apart plausible reasons, were assigned by the Tribunal in dismissing the claim petition against the 1st respondent. In such an event, certainly, it is a fit case where the matter has to be remitted to the Tribunal to

adjudicate upon the rights of the petitioner against the

1st respondent are concerned and so also the contract between the 1st and 2nd respondents as per the terms and conditions of the insurance policy and so also the contract between the 1st and

3rd respondents by way of hire agreement, by affording opportunity to both sides and to dispose of the matter within six (06) months from the date of receipt of judgment.

18. Hence, appeal is allowed, setting aside the order and decree, dated 31-01-2005, in M.V.O.P. No.403 of 2000, passed by the Tribunal. The matter is remitted to the Tribunal to adjudicate upon the rights of the petitioner so far as the 1st respondent is concerned and so also the contract between the 1st and 2nd respondents as per the terms and conditions of the insurance policy and so also the contract between the 1st and 3rd respondents by way of hire agreement with a direction to dispose of the same within a period of six (06) months from the date of receipt of

a copy of this judgment, by affording chance to both sides to lead further evidence, if any, by examining witnesses. However, it is needless to mention that the Tribunal shall dispose of the matter on merits uninfluenced by the observations, if any, made by this Court. So far as cross-objection is concerned, in view of the aforesaid discussion, the same stands closed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 26, 2015.

Mgr