

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

M.A.C.M.A.No.353 of 2005

JUDGMENT:

The instant appeal is preferred by the petitioner/appellant, aggrieved with the order dated 01.09.2004 in O.P.No.890 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Mahabubnagar (for short, 'the Tribunal') whereby and whereunder while granting a sum of Rs.35,000/- as compensation with interest @ 9% per annum, fastened the liability on the 1st respondent-owner of the vehicle alone while dismissing the claim against the 2nd respondent-insurer of the lorry.

2. The appellant herein is the petitioner in the original petition before the Tribunal, while respondent Nos.1 and 2, who are the owner and insurer of the lorry bearing No.CAS-1775 respectively, were respondent Nos.1 and 2 respectively.

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 the petitioner was transporting her household articles from Bangalore to Hyderabad in a lorry bearing No.CAS-1775 and was also travelling in the said lorry as owner of the goods, on 23.04.2004 at about 03.30 AM, when the lorry reached near 184/2 KM Boravelli Village, Manopad, since the driver of the said lorry drove it in a rash and negligent manner did not observe the stationed lorry bearing No.TAL-8005 and dashed it, due to which, the petitioner sustained grievous injuries and, therefore, sought Rs.1,50,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

5. The 1st respondent-owner of the vehicle remained *ex parte* before the Tribunal and the 2nd respondent-insurance company opposed the claim. A specific plea was taken by the insurance company before the Tribunal that the petitioner was travelling in the lorry as an unauthorized passenger. Another plea was raised that the claim was bad for non-joinder of the owner and insurer of the lorry bearing No.TAL-8005,

which was the stationed lorry. Therefore, finally sought to dismiss the claim.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner herself was examined as P.W.1 and marked Exs.A.1 to A.8. On behalf of the 2nd respondent-Insurance Company, no witnesses were examined, but Ex.B.1 policy was marked.

7. The Tribunal on appraisal of evidence of PW.1 supported by Exs.A.1, A.2 and A.4, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal basing on the medical evidence, while discarding the disability mentioned in Ex.A.7 for non-examination of the concerned medical officer, granted a sum of Rs.35,000/- by quantifying the amounts distinctly under the relevant heads. But, however, did not agree with the contention of the petitioner that she was travelling as owner of the goods in view of the positive admission made by her in her cross-examination that she was travelling as passenger in goods vehicle having boarded the vehicle as a passenger.

8. It is the said order which is under challenge in the instant appeal by the petitioner contending in the grounds of appeal that the Tribunal did not appreciate the oral evidence of PW.1 and the documentary evidence let in by PW.1 in proper perspective and in view of the decisions of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Baljit Kour [2004 ACJ 428]** and another judgment in **Oriental Insurance Co. Ltd., v. Shri Nanjappan and Others [2004 AJR 320]**, the Apex Court clearly held that the insurance company is liable to pay compensation to the third party victims and, therefore, sought to set aside that portion of the order in exonerating the

2nd respondent-insurance company from its liability to pay compensation to the petitioner while seeking enhancement of compensation.

9. Heard Sri K. Rathanga Pani Reddy, learned counsel for the appellant and Sri R.K. Suri, learned counsel for the

2nd respondent. The appellant filed a memo stating that the 1st respondent is not a necessary party.

10. Perused the order under challenge and the evidence on record let in by the petitioner. A perusal of the answers given by the petitioner in her cross-examination would show that she boarded the lorry at Lalgondahalli Village at about 03.00 PM to

go to Hyderabad as passenger. No doubt, she denied the suggestion that she was an unauthorized passenger, but, except her statement that she was taking her household articles, there is no other material on record supporting that statement by any legally acceptable evidence. In fact, copy of charge sheet was marked as Ex.A.2 shows that she was travelling along with her son who is 6 years old and in her evidence she stated that she was transporting household articles. This apart, in the instant case, she boarded the lorry at her village, certainly condemns her case, as the lorry was not engaged at that village for the purpose of transporting her household articles. Therefore, the finding recorded by the Tribunal that she was travelling as an unauthorized passenger in goods vehicle and that it accounts for violation of terms and conditions of Ex.B.1-policy, since well-reasoned and well-appreciated basing on the evidence let in by the petitioner/PW.1, does not warrant interference as no infirmity can be found in that reasoning. Hence, there is no merit in the appeal and the appeal is liable to be dismissed.

11. In the result, the appeal is dismissed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 18.02.2015.

ska