

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.2664 of 2005

JUDGMENT:

The 2nd respondent-New India Assurance Company Limited in O.P.No.162 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda (for short, 'the Tribunal') is the appellant. Aggrieved of the order dated 30.07.2003 passed in the said O.P., whereby and whereunder a sum of Rs.1,00,000/- was granted as compensation for the injuries sustained by the petitioner fastening joint and several liability on the owner and insurer, the 2nd respondent-Insurance Company preferred the instant appeal on the ground that the Tribunal overlooked the fact that there was violation of terms and conditions of the policy since the petitioner was travelling as a passenger in a car of his friend which was covered by Act policy without covering the risk of the passengers travelling.

2. The 1st respondent herein is the petitioner, while the 2nd respondent herein and the appellant, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

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 on 08.09.1999, the petitioner was travelling in the car belonging to his friend, A.Venkat Rao, bearing registration No.AP7 8132 to go to Hyderabad on personal work. One G.Satyanarayana was driving the said car from Hyderabad back to his village, since the said Venkat Rao alone went back to Hyderabad and

when the car reached outskirts of Kokkiralala village at about 8-30 p.m., since the driver of the car driven it in a rash and negligent manner, unable to control the speed dashed a lorry coming in opposite direction, in which incident, he alleged to have received grievous injuries leading to amputation upto elbow joint of his right hand. Since he was doing business, on account of this accident, he sustained partial permanent disability. Therefore, sought compensation against the respondent Nos.1 and 2, who are the owner and insurer of the car respectively.

5. The 1st respondent, owner of the car, remained *ex parte*. The 2nd respondent opposed the claim. In fact, the 2nd respondent-Insurance Company has put forth a specific plea that the said car was covered with insurance policy which was Act policy and it was not covering the risk of the travelling passengers, and since the petitioner was passenger in the said car, he is not entitled to compensation. The Insurance Company has also taken the plea that the owner and insurer of the lorry, coming in opposite direction dashed their car, are also necessary parties and their absence makes the claim bad.

6. Basing on the said pleadings, the Tribunal framed the following three issues about the responsibility for the accident:

"1) Whether the accident was due to the rash and negligent driving by the driver of Ambassador car bearing No.AP7/8132 ?

2) Whether the petitioner is entitled, if so, what is the quantum of amount ?

3) To what relief ?"

7. During enquiry, the petitioner examined himself as P.W.1 besides marking the documents as Exs.A.1 to A.5. On behalf of the contesting

2nd respondent-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

8. The Tribunal, while tendering finding on issue No.1, basing on the evidence of P.W.1 supported by Exs.A.1 and A.2, held it in favour of the petitioner. On issue No.2, which deals with the determination of compensation, the Tribunal taking various factors into consideration, granted Rs.1,00,000/- as compensation. On issue No.3, while discussing contributory negligence and the consequence of non-impleadment of the owner and insurer of the opposite lorry, held that the respondent Nos.1 and 2 are jointly and severally liable to pay compensation.

9. Aggrieved of the said order, the Insurance Company preferred the instant appeal mainly contending in the grounds of appeal that the insurance policy does not cover the passengers risk in a private car.

10. Heard Sri C.V.Rajeeva Reddy, learned counsel for the appellant-Insurance Company. The instant appeal against the 1st respondent herein (petitioner before the Tribunal) is dismissed for default on 05.01.2012. None appears for the 2nd respondent herein, who is the owner of the accident vehicle.

11. Admittedly, the specific plea putforth by the Insurance Company as to the nature of policy and the risk of the petitioner being not covered as he was travelling as a passenger in the ambassador car, still, the Tribunal has not framed an issue touching the said violation of terms and conditions of the policy and the Tribunal ought to have framed relevant issue on that aspect of the case, more particularly, when the Tribunal was marking Ex.B.1, copy of the insurance policy, on consent and ought to have addressed the said aspect. In that view of the matter, it is a case for remitting the matter to the Tribunal with a

direction to frame necessary issue on the said plea, which touches the liability of the Insurance Company, and, therefore, the matter is remitted to the Tribunal directing to frame necessary issue additionally by affording an opportunity to both sides to lead evidence, if any, and to dispose of the matter within six months from the date of receipt of copy of the order herein. As a consequence, the order and decree dated 30.07.2003 passed by the Tribunal in O.P.No.162 of 2000 are hereby set aside. The amount, if any deposited by the Insurance Company (appellant herein), shall be subject to the result in the original petition and the observation to be made by the Tribunal therein depending on the result in the original petition.

12. With the above observations and directions, the instant appeal is allowed remitting the matter to the Tribunal as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

09th March, 2015

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