HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2027 OF 2009

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by respondent No.2 - M/s. ICICI Lombard General Insurance Company Limited in M.V.O.P. No.872 of 2005, on the file of the Chairman, Motor Accident Claims Tribunal - cum - District Judge, Khammam (for short 'the Tribunal'), challenging the liability fastened on it by the order and decree, dated 19-01-2007, whereby and where-under, a sum of Rs.39,000/- was awarded as compensation with interest at 7.5% per annum thereon as against the claim of Rs.75,000/- laid by the petitioner under Section 166 of the Act.

2. Respondent No.2 and the appellant herein, who are driver-cum-owner and insurer of tractor and trailer bearing registration No.AP 20L 7537 and AP 20G 6542, respectively, are respondent Nos.1 and 2, respectively, while respondent No.1 is the petitioner in MVOP before the Tribunal.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in MVOP.

4. The facts, in brief, are that on 25-06-2005, the petitioner and other coolies were proceeding on the aforesaid tractor-cum-trailer loaded with sand towards its owner's house, and when the tractor

reached near Tank Bund of Laxmipuram village at about 3.00 p.m., its driver since drove it in a rash and negligent manner at high speed, the tractor-cum-trailer turned upside down, due to which, the petitioner and others sustained injuries. The police concerned also registered a case in Crime No.71 of 2005 against respondent No.1. Hence, the petitioner laid the claim seeking a sum of Rs.75,000/- as compensation against respondent Nos.1 and 2, being driver-cum-owner and its insurer.

5. Though, respondent No.1 made his appearance before the Tribunal did not choose to file counter. Whereas, respondent No.2, its insurer, filed counter opposing the claim.

6. The Tribunal having framed three issues, examined PW.1 and marked Exs.A-1 to A-5 on behalf of the petitioner, whereas RWS.1 to 3 were examined and Exs.B-1 to B-3 were marked on behalf of respondents.

7. The Tribunal having analyzed the evidence on record, both, oral and documentary, held issue No.1 in favour of the petitioner, holding that the accident had occurred due to rash and negligent driving of the driver of the tractor-cum-trailer; on issue No.2, relying on Ex.A-3, wound certificate, which shows that the petitioner sustained fracture of right ribs and grievous injury on the liver, granted a sum of Rs.20,000/- for fracture injury; Rs.15,000/- for

grievous injury on the liver and a sum of Rs.4,000/- towards medical expenses, making a total of Rs.39,000/- as compensation with interest at 7.5% per annum thereon as against Rs.75,000/- mulcting joint and several liability on respondent Nos.1 and 2.

8. Aggrieved over the said order and decree, respondent No.2 - Insurer preferred the instant appeal contending that Tribunal has not appreciated the evidence on record and, therefore, sought to allow the appeal.

9. Heard Sri Kota Subba Rao, learned Standing Counsel for the appellant - Insurer. Though notices were served on respondents, none appeared for them.

10. Perused the order and the material on record, both, oral and documentary, let in by the parties.

11. In fact, the very evidence of RW.1 shows that though, in his chief examination, he has set up the story that while he was driving the tractor-cum-trailer, the accident had occurred, but in his cross-examination, he admits that the crime was registered against him on the ground that he was responsible for occasioning the accident, causing injuries to the petitioner, irrespective of the fact that whether the petitioner can be construed as unauthorized passenger. The very fact that the owner, who is respondent No.1, has not produced his driving license, despite examining himself as RW.1, and

despite receiving original of Ex.B-2 notice, as evidenced by the postal acknowledgment - Ex.B-1 is sufficient to hold that the Tribunal went wrong in fastening liability on the insurer. Though, reference is made to the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Swaran Singh and Others**[1], it shows that there was no proper appreciation of law touching the issue herein.

12. Hence, the appeal is allowed setting aside the order and decree, dated 19-01-2007, passed by the Tribunal in M.V.O.P. No.872 of 2005 so far as the appellant - respondent No.2 is concerned. However, the order and decree is confirmed in all other respects so far as the liability of respondent No.2 herein, driver-cum-owner of the vehicle is concerned. No order as to costs.

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

A. SHANKAR NARAYANA, J

September 12, 2016.
Mgr

[1]. AIR 2004 SC 1531