HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A. Nos.713 of 2008 and 3514 of 2012

COMMON JUDGMENT:

Impugning the award dated 30.03.2007 passed in O.P. No.1026 of 2002 on the file of the Chairman, I Additional Motor Accidents Claims Tribunal, Nizamabad (for short, 'the Tribunal'), maintained by the injured/claimant against the owner and insurer of the lorry bearing registration No.AP-23T-2676 under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for Rs.4,00,000/- for the injuries sustained by him in the accident dated 23.07.2001 when once he was along with 20 persons travelling in the said lorry owned by respondent No.1 and insured with respondent No.2 of the claim petition, from which, the Tribunal, having fixed joint and several liability on both the owner and insurer, granted Rs.1,00,000/-, as the said compensation is utterly low, the claimant maintained M.A.C.M.A. No.713 of 2008; whereas, claiming that there is no liability on the part of the insurer and the compensation is excessive, the insurer maintained M.A.C.M.A. No.3514 of 2012.

2. Heard both sides in both the appeals for common disposal at length and perused the material on record.

3. Ex.B.1-insurance policy clearly shows that it is only an act policy. No doubt, under Section 147 of the Act, as laid down by the Apex Court in National Insurance Company

Limited v. Prembhai Patel and others[1], the act policy even covers the risk of the driver and owner or representative of the goods in a goods vehicle and conductor of a passenger public carrier. Here, it is not the specific claim of the injured-claimant that he is the owner or representative of the goods, but claimed as the coolie along with others. What the expression in Prembhai Patel's case (supra 1) is, the act policy covers the risk of statutory liability of driver of the vehicle and in case of a public service vehicle the conductor and in the case of goods carriage a person being carried in the vehicle as employee under the owner for the Workmen's Compensation Act, 1923 (for short, 'WC liability'), unless there is additional premium paid to indemnify beyond WC liability by Section 147(1) of the Act. Here, it is clear that Section 147(1) of the Act no way covers the risk of the coolies even from the expression in Prembhai Patel's case (supra 1). There is no any pleading that the injured and other persons were for bringing the load of sand travelling in the empty vehicle as employees engaged by the owner of the vehicle apart from same may not cover the risk under the Act liability.

4. The Tribunal did not consider these aspects, as rightly pointed out by the learned counsel for the insurer.

[1] 2005(2) ACJ 1323

5. However, the fact remains that even taken the injured was unauthorized passenger of the goods vehicle, as the award of the Tribunal is subsequent to the expression of the Three-Judge Bench of the Apex Court in New India Assurance Company Limited v. Asha Rani and others[2], which even considered another Three-Judge Bench expression in National Insurance Company Ltd., v. Baljit Kaur and others[3]. The principle laid down in Asha Rani's case (supra 2) squarely applies to the case on hand by the time of the award to the unauthorized passenger to that extent.

6. However, the fact remains that it is not while travelling, the injuries sustained as unauthorized passenger, but after one of the wheels of the vehicle removed and the vehicle turned turtle and after fall of the injured among others, the vehicle falls on him, thereby to that extent, he is a third party, as laid down in Thoznilalar Transport Company v. Valliammalal[4], A.Subramani v. Mani[5], NIC v. Savithri Devi[6], Oriental Insurance Company Limited v. Edward D'Cruz Rodrigues[7], United India Insurance Company Limited v. Kurva Yejju Mallamma[8].

[2] (2003) 2 SCC 223
[3] 2004 ACJ 428 (SC)
[4] 1990 ACJ 201 (Madras)
[5] 1990 ACJ 37 (Madras)
[6] 1991 ACJ 1991 (Delhi)
[7] 1995 ACJ 1106 (Bombay and Panaji)
[8] 2007 (3) ALT 366 AP

7. When such is the case, but for traveled as unauthorized passenger, he could not met with an accident, thereby, 40% liability of the injured can be fixed for non-liability and the liability to the insurer can be fixed at 60% therefrom.

8. Now coming to the quantum of compensation, the Tribunal awarded Rs.1,00,000/- as referred to supra. In fact, as per the evidence of P.W.2-Civil Assistant Surgeon of Government Area Hospital, Kamareddy and claimed as E.N.T. Specialist, there is hearing disability from the head injury and from the audiometry an hearing test conducted by him to P.W.1 and from the audiogram report, the permanent hearing disability is assessed nearly at 90%. It is not the functional disability of 90% of whole body, but for to that limb. There is, thus, no positive evidence of that affects his avocation as coolie. No doubt, hearing impediment is one of the deformities certainly have an impact on the earning capacity of a coolie and therefrom, even taken the same as 20% functional disability on the earning capacity, what the Tribunal awarded of Rs.1,00,000/- representing 60% liability of the insurer no way can be held excessive.

9. Accordingly, both the appeals are disposed of while confirming the quantum of compensation, however, holding the same is representing 60% liability of the insurer to indemnify the owner and for the remaining 40%, the claimant is liable. In all

other respects, the award of the Tribunal holds good. There shall be no order as to costs.

10. Miscellaneous petitions pending, if any, in these appeals, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

18.10.2016
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