

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2798 OF 2009

JUDGMENT:

The petitioner in M.V.O.P. No.494 of 2001, on the file of the Chairman, Motor Accident Claims Tribunal - cum - II Additional District Judge, Vijayawada (for short 'the Tribunal'), preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') having got dissatisfied with the award of Rs.32,500/- as compensation granted by the Tribunal and exonerating the liability of respondent No.3, by the order and decree, dated 07-04-2009, as against the claim of Rs.1,00,000/- laid under Sections 140 and 166 of the Act read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules, 1989, seeking enhancement of compensation and mulcting liability on respondent No.3 - Insurance Company.

2. The appellant herein is the petitioner, while respondent Nos.1 to 3, who are driver, owner and insurer of tractor-cum-trailer bearing registration No.AP 16W 2030, respectively, are respondents as such in MVOP before the Tribunal.

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

4. The facts briefly stated are that the petitioner was 35 years old, earning Rs.50/- per day affected by polio besides being dumb.

On

17-12-2000 at about 4.15 p.m., while he along with co-workers were returning from Chodavaram after completion of work in a trailer of the tractor and reached Pedapulipaka bridge, since the driver of the tractor drove it in a rash and negligent manner, it fell into the side by Canal and turned upside down, due to which, he sustained multiple grievous injuries and admitted in Vijayadurga Orthopaedic Nursing Home, where he was treated by Dr.K.V. Vara Prasad. Claiming that he spent huge amount towards medicines and that he suffered injuries, he sought the aforesaid amount from respondent Nos.1 to 3.

5. Respondent Nos.1 and 2, driver and owner of the vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.3, insurer of the vehicle, opposed the claim, stating that the petitioner and others, who were travelling in the tractor, were not unloading coolies or they were fare-paid passengers and, thus, owner violated the terms and conditions of the policy, and thereby sought to dismiss the claim petition.

7. Basing on the said pleadings, the Tribunal has framed three issues.

8. During inquiry, the petitioner besides examining himself as PW.1, has also examined the doctor as PW.2 and yet another witness as PW.3 and marked Exs.A-1 to A-6, besides getting X-ray marked as

Ex.X-1. On behalf of respondent No.3, no witnesses were examined, but a copy of insurance policy was marked as Ex.B-1.

9. The Tribunal recorded a finding on issue No.1 in favour of the petitioners. On issue No.2, the Tribunal recorded a positive finding in paragraph No.20 of the order that the petitioner and PW.3 were not travelling as co-workers/coolies for loading and unloading the sand, but travelling on the trailer sitting over the sand loaded in the trailer basing on the contents of Exs.A-1 - first information report. The Tribunal placing reliance on the decisions of the Hon'ble Supreme Court in **Mr. Jayadevappa v. Oriental Fire and general Insurance Company Limited¹** and **Kalavati v. Munnalal and another²**, held that the petitioner is not entitled to any compensation from the Insurance Company as owner violated the terms and conditions of the policy. However, against respondent Nos.1 and 2, the Tribunal has granted Rs.32,500/- towards compensation to the petitioner fixing joint and several liability with rate of interest at 7.5% per annum.

10. The aforesaid order is under challenge not only for enhancement of compensation, but also to fasten liability on respondent No.2.

¹. 2005 ALJ 1801 (SC)

². 2008 ALJ 1757 (MP)

11. Heard Sri T. Ravi Kumar, learned counsel for the appellant - petitioner, and Sri Bathula Raj Kiran, learned standing counsel for respondent No.3 - Insurer. The notice sent to respondent No.1, driver of the vehicle, returned un-served for want of sufficient address. Though, notice served on respondent No.2, owner of the vehicle, none appears for him. Non-service of notice on respondent No.1 and non-appearance of respondent No.2 make no difference in deciding the controversy herein as they remained *ex parte* before the Tribunal and suffered a decree.

12. Perused the order and the material, both, oral and documentary.

13. A short question that arises for consideration is, whether the Insurance Company can be mulcted with liability to pay compensation to the petitioner, and that the compensation awarded by the Tribunal is fair and reasonable?

14. The learned counsel for the appellant could not point out any concrete evidence which favours the petitioner to fasten liability on Insurance Company. From The very fact that the petitioner along with PW.3 was sitting on the sand loaded in the trailer having boarded it already loaded with sand as could be gathered from Exs.A-1 and A-4, it has to be inferred that the petitioner was an unauthorized passenger. Therefore, the finding recorded by the Tribunal dismissing

the claim petition against respondent No.3 - Insurance Company cannot be upset as it does not suffer from any legal infirmity but based on appreciation of evidence on record and well-reasoned.

15. So far as enhancement of compensation is concerned, admittedly, no disability certificate is forthcoming. On perusal of record, it is clear that the petitioner suffered fracture of left femur as per Ex.A-3 and also fracture of left radius with subluxation of left wrist and other injuries are grievous in nature and he had undergone surgical intervention in the form of I.L. nailing. Thus, when kept in view, the nature of injuries sustained by the petitioner and the surgical intervention which PW.2 - Medical Officer has testified, the amount of Rs.7,000/- granted by the Tribunal towards pain and suffering is enhanced to Rs.30,000/- including injuries sustained by him. The amount of Rs.500/- granted by the Tribunal towards transport charges is on lower side and, therefore, the same is enhanced to Rs.1,000/-. The amounts of Rs.20,000/- and Rs.3,000/- towards medical expenses and extra nourishment, respectively, are confirmed. The amount of Rs.2,000/- granted towards loss of temporary earnings is enhanced to Rs.4,500/- @ Rs.1500/- per month for a period of three months. Thus, the petitioner is totally entitled to Rs.58,500/- as compensation as against Rs.32,500/- granted by the Tribunal.

16. Concerning rate of interest, the Tribunal granted at 7.5% per annum, the same is maintained on the amount granted by the

Tribunal and also on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**³.

17. In the result, the appeal is allowed in part only to the extent of enhancing compensation modifying the order and decree, dated 07-04-2009, in M.V.O.P. No.494 of 2001, passed by the Tribunal to Rs.58,500/- (Rupees fifty eight thousand and five hundred) from Rs.32,500/- with interest at the rate of 7.5% per annum thereon from the date of petition till realization, and confirming the order and decree in all respects including the dismissal of claim petition against Insurance Company - respondent No.3. No order as to costs.

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

A. SHANKAR NARAYANA, J

August 16, 2016.

Mgr

³. 2013 ACJ 1403