

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1607 OF 2009

JUDGMENT:

Aggrieved over the finding recorded by the learned Chairman, Motor Accident Claims Tribunal - cum - I Additional District Judge, Guntur (for short 'the Tribunal') in the order and decree, dated 19-02-2007, in M.V.O.P. No.386 of 2005, dismissing the claim against respondent No.2 - Insurance Company, while granting compensation of Rs.54,000/- with interest at 7.5% per annum thereon as against the claim of Rs.1,10,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the injuries sustained by the petitioner, mulcting liability on respondent No.1, owner of the vehicle alone, the present appeal is preferred under Section 173 of the Act to set aside the said finding and fasten liability on the insurance company also, besides seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.AEW 2919, respectively, are respondents as such in the MVOP before the Tribunal.

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

4. The fact-situation occurring in the instant case is not that much relevant for the reason that the submission of the learned counsel for the appellant has been, that the petitioner at the relevant time was travelling in the lorry as a loading and unloading coolie, and that his risk was covered by the policy issued by the 2nd respondent. Thus, the scope touching the controversy is very limited.

5. The Tribunal having elaborately discussed the fact-situation occurring in the instant case on issue No.2 concerning the contractual or statutory obligation on the part of the 2nd respondent to indemnify the liability of respondent No.1 so far as coolies are concerned and also going through the catena of decisions relied on by the learned counsel for the petitioner before the Tribunal recorded a definite finding basing on the ratio laid down in **United India Insurance Company Limited v. Tilak Singh and others**¹ and **New India Assurance Company Limited v. Lodya Shankar and another**², refused to fasten liability on the Insurance Company and thereby dismissed the claim petition against insurer. Of course, the Tribunal also probed the factum of whether the driver of the lorry was holding a valid driving license or otherwise. Finally, the Tribunal recording a finding that respondent No.1 violated the terms and conditions of the policy, opined that respondent No.1 alone is liable to pay the compensation.

¹. 2006 ACJ 1441

². 2004 (3) ALD 400

6. Now, that finding is challenged by the petitioner in the instant appeal.

7. Heard Sri N. Subba Rao, learned counsel for the appellant - petitioner. Despite service of notice on respondent Nos.1 and 2, owner and insurer of the vehicle respectively, none appears for them.

8. The learned counsel for the appellant would submit that the risk of loading and unloading coolies was covered by the policy and, therefore, sought to fasten liability on Insurance Company by setting aside the finding recorded there-for by the Tribunal.

9. Perused the order and the evidence on record, both, oral and documentary.

10. The fact that the petitioner was travelling in the lorry is not in dispute. The question of the petitioner being loading and unloading coolie is not certain from the order. But, still, even otherwise, the purpose for which the risk would be covered is only for the purpose of any accident being met at the time of loading the goods and unloading them. Such is not the fact-situation in the instant case. Therefore, the finding recorded by the Tribunal cannot be faulted.

11. The appeal, therefore, lacks merit and, accordingly, dismissed. No order as to costs.

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

A. SHANKAR NARAYANA, J

August 23, 2016.

Mgr

