

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. Nos. 160 and 163 OF 2006

COMMON JUDGMENT:

1. Both these Appeals arise out of the common award, dated 04.08.2005, in O.P. Nos.1390 and 1391 of 2002, on the file the Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Warangal (for short, 'the Tribunal').

2. Appellant in these Appeals is the 4th respondent-insurance company, 1st respondent in these Appeals is the petitioner-injured, and the respondents 2 to 4 are the respondents 1 to 3 before the Tribunal. 2nd respondent herein is the driver and 3rd and 4th respondents herein are the owners of the tractor and trailer bearing No.AP36T429 and 430.

3. For convenience of reference, the ranks given to the parties before the Tribunal will be adopted throughout this common judgment.

4. The brief facts of the case are that, on 23.11.1998, while the petitioners-injured engaged the crime vehicle, by paying Rs.700/-, to transport their cotton from Seethampet to Jammikunta market and, during the course of journey, when they reached the outskirts of Shambunipet village, Kamalapur Mandal, the crime vehicle fell into a deep pit, due to the rash and negligent driving of its driver, as a result of which, the petitioners along with others sustained severe injuries. Immediately, the petitioners were shifted to Jaya Trauma Centre, Hanamkonda; where the petitioner in O.P. No.1390 of 2002

underwent treatment as inpatient for four days, he was operated to his both collar bones and he was advised complete bed rest for six months; whereas, the petitioner in O.P. No.1391 of 2002 underwent treatment initially as inpatient for sixteen days, and later for 21 days in Jaya Trauma Centre, Hanamkonda, and also underwent treatment as inpatient in Apollo Hospital, Hyderabad for five days, and he was advised complete bed rest for six months. A case in Crime No.221 of 1998, for the offences under Sections 337 and 338 of I.P.C., was registered by Kamalapur P.S. against the driver of the crime vehicle. The petitioners, separately, filed the Petitions before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 claiming compensation of Rs.2,00,000/- and Rs.3,50,000/- respectively for the Injuries sustained by them in the motor vehicle accident.

5. Respondents 2 and 3, owners of the crime vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.1, driver of the crime vehicle, filed counter denying the rash and negligent act on his part and contended that the accident occurred only due to the negligent act of the petitioners. He further contended that since the crime vehicle was insured with 4th respondent-appellant, 4th respondent alone is liable to pay compensation to the petitioners.

7. Respondent No.4-appellant filed counter before the Tribunal contending that the 1st respondent has no valid driving license and

RC book to drive the vehicle, and 2nd and 3rd respondents, being owners of the crime vehicle, un-authorizedly permitted the petitioners to travel in the crime vehicle by grossly contravening the terms of insurance policy, it is not under obligation to pay compensation to the petitioners.

8. The Tribunal, on consideration of the pleadings and evidence of the witnesses PWs.1 to 5, and the documents Exs.A-1 to A-11 in O.P. No.1390 of 2002 and Exs.A-1 to A-19 and Ex.X-1, and Ex.B-1, on behalf of the respondents, in O.P. No.1391 of 2002, passed the common Award granting compensation of Rs.41,000/- in O.P. No.1390 of 2002 and Rs.60,000/- in O.P. No.1391 of 2002 with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization making all the respondents jointly and severally liable to pay the same.

9. Being aggrieved, 4th respondent-appellant preferred the instant Appeals, separately, seeking to set-aside the common award.

10. Heard Mrs S.A.V. Ratnam, learned standing counsel for the 4th respondent-appellant, and Mr. Pottigari Sidhar Reddy, learned counsel for the petitioners-injured in both the Appeals.

11. Mrs. S.A.V. Ratnam, learned counsel for the appellant, mainly submitted that the petitioners-injured traveled in the crime vehicle as gratuitous passengers and it is in gross violation of the terms and conditions of insurance policy, Ex.B-1. Therefore, the common award passed by the Tribunal is liable to be set-aside.

12. The points that arise for consideration in these matters are:

1. Whether the petitioners-injured traveled in the crime vehicle as gratuitous passengers?

2. Whether the common award passed by the Tribunal is without considering the violations of the terms and conditions of the insurance policy and whether the common award passed by the Tribunal is illegal, perverse and liable to be set-aside?

13. POINT Nos.1 and 2: Both these points go together. Admittedly, the Tribunal, on consideration of the evidence, held that the accident occurred due to rash and negligent driving of the driver of the crime vehicle and awarded the compensation in both the petitions. There is no dispute with regard to the quantum of compensation in these Appeals. The only dispute raised by the learned counsel for the appellant is the violation of the terms and conditions of insurance policy and that the gratuitous passengers are not entitled for compensation, as there is no coverage of insurance policy for the gratuitous passengers traveling in the crime vehicle. It appears that the 4th respondent-appellant has not taken this specific plea before the Tribunal and that is why no issue relating to this aspect was framed and no discussion was found in the entire common order. The 4th respondent-appellant has not examined any witness on its behalf except marking the document Ex.B-1, copy of insurance policy. As seen from the material available on record, there is no evidence on behalf of the 4th respondent-appellant to show that the petitioners-injured in violation of the

insurance policy have traveled as gratuitous passengers. It is proved by the chief-affidavits of PWs.1 and 2 that they have traveled as owners of the goods in the crime vehicle, by hiring it for Rs.700/-. No contra evidence is appearing on behalf of the 4th respondent-appellant. Therefore, the Tribunal, on consideration of the evidence available before it, properly appreciated the evidence on record and granted reasonable compensation to the petitioners-injured. I do not see any valid ground to interfere with the well reasoned common order passed by the Tribunal

14. Hence, both these Appeals are dismissed.

15. As a sequel, miscellaneous petitions, if any, pending in these Appeals shall stand dismissed as infructuous. No order as to costs.

Date: 20.12.2016.
Dsh

G. SHYAM PRASAD, J



HON'BLE SRI JUSTICE G. SHYAM PRASAD

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