

HON'BLE SRI JUSTICE S. RAVI KUMAR

M.A.C.M.A. No.223 of 2014

JUDGMENT:

This appeal is preferred questioning order dated 01.11.2010 in MVOP No.380 of 2006 on the file of Chairman, MACT-cum-V Additional District Judge, Kurnool at Nandyal.

2. First respondent herein filed claim petition before Motor Accidents Claims Tribunal (for short "lower tribunal") contending that he sustained injuries in a road accident on 28.04.2005 while traveling as coolie on Tractor Trailer bearing No.AP 21W 2446-AP 21W 2447. He contended that the driver of the vehicle drove the vehicle in a rash and negligent manner and on seeing RTC Bus coming in opposite direction he lost control over the vehicle, due to which, first respondent and other coolies along with cement poles fell down from the vehicle and received multiple injuries.

3. Insurance company disputed the claim of first respondent questioning the liability on the ground of violation of policy conditions. It also contended that petitioner was not a coolie of the tractor and he was travelling along with others in the tractor and the claim of first respondent is not tenable. On these contentions, lower tribunal conducted enquiry, during which, two witnesses are examined on behalf of injured/claimant and 5 documents are marked and on behalf of insurance company RW.1 is examined and one (1) document is marked and on a over all consideration of oral and documentary evidence, lower tribunal granted a sum of Rs.96,500/- as against claim of Rs.1,50,000/-. Now aggrieved by the award, insurance company preferred the

present appeal.

4. Heard arguments.

5. Advocate for appellant submitted that lower tribunal failed to see that the accident was due to negligence of RTC bus driver and therefore insurance company is not liable to pay any compensation. It is also submitted that no premium is paid to cover the risk of coolies and therefore as no insurance is paid for the claimant, insurance company is not liable. It is further submitted that insured vehicle is used for commercial purpose in contravention of policy conditions and that insurance company is not liable to pay any compensation. It is further submitted that compensation granted is high and excessive.

6. Advocate for claimant submitted that the claimant can claim compensation as a third party and as there is valid policy, lower tribunal has rightly granted compensation and that objection of insurance company is not tenable.

7. Now the point that would arise for my consideration is:

Whether the Award of lower tribunal is legal, proper and correct?

POINT:

8. There is no dispute with regard to accident and the injury sustained by first respondent in the said accident. Only objection of the insurance company is that as there is no premium paid to the coolie and as the claimant claimed the compensation as a coolie travelling in the tractor-trailer, the insurance company is not liable.

9. On the other hand it is the contention of claimant that

even as a third party he is entitled for compensation and objection of insurance company is not tenable.

10. As seen from the material, the claimant along with some other persons was travelling in the tractor trailer along with cement poles for construction of houses belonging to A.P.Housing Construction Corporation, Nandyal, and they are in the tractor to unload those cement polls.

11. As rightly pointed out by advocate for claimant even if claimant is treated as a third party for the negligence of driver, owner is liable and as there is valid policy covering the risk, insurance company has to reimburse the owner's liability. This is not a claim made under Workmens' Compensation Act and the claim is made under the Motor Vehicles Act and petition is also filed under Section 166 (a), which indicates that claim is made as a third party. The insurance company has not questioned the quantum granted by the tribunal and it only challenged award about its liability. As there is valid policy, if the claimant is treated as third party, objection of insurance company is not tenable. Therefore, appeal is devoid of merits.

12. For these reasons, it is held that lower tribunal has rightly granted compensation and that there are no grounds to interfere with the order of the lower tribunal.

13. Accordingly, this M.A.C.M.A. is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 23-02-2016.

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