

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.179 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the respondent No.2 – Oriental Insurance Company Limited, aggrieved by the judgment and decree dated 16.08.2003 in O.P.No.162 of 1997 passed by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ongole (for brevity “the Tribunal”), whereby and whereunder, a sum of Rs.1,65,000/- was awarded towards compensation with interest at 9% per annum from the date of petition till the date of realisation, as against the claim of Rs.5,00,000/- laid under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for brevity “the Act”) for the injuries sustained by the petitioner, on the ground that no insurance policy, at all, was issued to the vehicle involved in the accident belonging to the 1st respondent, but the Tribunal, somehow, recorded a finding that Ex.B.1 – true copy of Insurance Policy was issued by it (Oriental Insurance Company Limited) in respect of the Lorry bearing No.MP 07G 0559 and that the policy was in force from 28.05.1996 to 27.05.1997 and thereby joint and several liability fastening on it along with the 1st respondent, who is the owner of the offending Lorry.

2. In fact, according to the appellant-insurer, the policy covered by Ex.B.1, referred to in para-12 of the impugned judgment, was issued by the New India Assurance Company Limited, which figured as respondent No.4 and, therefore, a wrong finding was recorded by the Tribunal.

3. The facts would show that the petitioner, who sustained injuries while working as Deputy Executive Engineer in Panchayat

Raj Department, Ongole, laid a claim under Sections 140 and 166 of the Act, seeking compensation of Rs.5,00,000/- for the injuries in the accident occurred on 15.07.1996 at about 4.30 p.m., while he along with four others was returning from Bangalore to Ongole in an hired Ambassador Car bearing No.AP 27 7569 and when it reached Pathikonda cross, which is located on Palamaner-Bangalore Road, a Lorry bearing No.MP 07G 0559 coming in an opposite direction in a rash and negligent manner with high speed, dashed the car, due to which the driver of the car died on the spot and the petitioner sustained severe injuries all over the body and taken treatment.

4. Basing on the pleadings, the Tribunal framed the following four issues in order to fix the liability and determine the amount of compensation:

“(1) Whether the petitioner had received injuries on account of the rash and negligent driving of the Lorry bearing No.MP 07G 0559 or Car bearing No.AP 27 7569 or both by its respective drivers?

(2) Whether the petitioner is entitled to claim any compensation under no fault liability, and if so, to what amount and from whom?

(3) Whether the petitioner is entitled to claim any compensation, and if so, to what amount and from whom?

(4) To what relief?”

5. During enquiry, on behalf of the petitioner, P.Ws.1 and 2 were examined and marked Exs.A.1 to A.7. On behalf of the 2nd respondent – insurer, no witnesses were examined, but Ex.B.1 – Certified copy of the insurance policy of New India Assurance Company Limited was marked.

6. The Tribunal, while adjudicating upon the controversy with

regard to the liability, basing on Ex.B.1 insurance policy, fastened liability on respondent Nos.1 and 2, stating that the said policy was issued by respondent No.2 relating to Lorry bearing No.MP 07G 0559, though it was issued by respondent No.4 – New India Assurance Company Limited, while exonerating the liability of respondent Nos.3 and 4, who are owner and insurer of Car, respectively.

7. In view of the above, in order to resolve the controversy as regards which of the respondents are responsible for taking place of accident and the liability to pay compensation, to which petitioner is entitled, if any, the matter requires to be remitted to the Tribunal with a direction to give an opportunity to the petitioner and respondent Nos.1 to 4 to lead further evidence, if any.

8. Accordingly, this Civil Miscellaneous Appeal is allowed, setting aside the judgment and decree dated 16.08.2003 in O.P.No.162 of 1997 and the matter is remanded to the Tribunal for disposal in accordance with law, by affording an opportunity of hearing to all the parties and also to lead further evidence, if any, in addition to the evidence already on record. Since it is a claim relating to the year 1997, the Tribunal is directed to dispose of the O.P. within a period of four months from the date of receipt of a copy of this judgment. No order as to costs.

9. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

23.03.2016.

Msr

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