

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1634 OF 2005

JUDGMENT:

Aggrieved by the order dated 17.10.2003 in O.P. No.157 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Ongole (for short, 'the Tribunal'), whereby and whereunder, the Tribunal, while granting Rs.57,000/- as compensation, as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the appellant-petitioner, fastened liability only on the owner of the lorry bearing registration No.AP 11T 3693, in which the appellant-petitioner was travelling, while dismissing the claim petition against respondent No.2-insurer, the instant appeal is preferred under Section 173 of the Act on the ground that the Tribunal went wrong in exonerating respondent No.2-insurer despite the fact that the appellant-petitioner was travelling in the lorry as owner of the goods since he was carrying two sheep along with his brother and paid charges also and, therefore, sought to set aside the said order and fasten liability on respondent No.2-insurer.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the lorry bearing registration No.AP 11T 3693, are respondent Nos.1 and 2, respectively, in the original

petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 15.08.1997, the petitioner and his brother purchased two sheep and started travelling in the lorry bearing registration No.AP 11T 3693 by paying fare to the driver of the lorry to go to Ongole to sell them for profit and when the lorry reached near Narnevaripalem on National Highway No.5, since the driver drove the lorry in a rash and negligent manner at high speed, he lost control over it and dashed a palmyrah tree, due to which the petitioner sustained fracture to his left leg and left hand. The petitioner, claiming that he took treatment in Ratna Babu Hospital, Guntur, where he underwent an operation to his left leg and he spent Rs.30,000/- towards medical expenses and, on account of the accident, he was unable to walk and suffered permanent disability, and, therefore, sought to grant Rs.1,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle.

5. Respondent No.1, who is the owner of the accident vehicle, remained *ex parte*. Respondent No.2-insurer opposed the claim by raising a specific plea that

the petitioner was an unauthorized passenger and he cannot be construed as owner of the goods.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the accident occurred due to the rash and negligent driving of the lorry bearing No.AP-11-T-3693?

2. Whether the petitioner is entitled to claim any compensation and if so, to what amount and from whom?

3. To what relief?"

7. During enquiry, the petitioner besides examining himself as P.W.1, examined the doctor as P.W.2, besides marking Exs.A.1 to A.3 and Exs.X.1 to X.4 to substantiate his claim; whereas, on behalf of respondent No.1-Insurance Company, R.Ws.1 and 2 were examined and Ex.B.1, which is copy of insurance policy, was marked on consent.

8. On appraisal of the evidence on record, both, oral and documentary, let in by both sides, the Tribunal held issue No.1 in favour of the petitioner; and on issue No.2, determined compensation at Rs.57,000/- since the petitioner sustained fracture of both bones of left leg and fracture of radius of left hand being grievous injuries,

however, concerning liability of respondent No.2-insurer, to indemnify respondent No.1-owner did not agree with the submission of the learned counsel for the petitioner, who has placed reliance on the decisions of this Court in **Avula Parvathamma and others v. The New India Assurance Company Limited**, represented by its Manager, Hyderabad^[1] and **Oriental Fire and General Insurance Company Limited v. Bondili Sitharam Singh and others**^[2], however considered the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**^[3], on which reliance was placed by the learned counsel for respondent No.2-insurer and, thereby, held that the petitioner was an unauthorized passenger and cannot be construed as owner of the goods and, consequently, dismissed the claim petition against respondent No.2-insurer, while directing respondent No.1-owner to pay the compensation of Rs.57,000/- with interest at 9% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal ought to have construed the petitioner as owner of the goods in view of decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Baljit Kaur and others**^[4] and, thereby, sought to

enhance the compensation and also fasten joint and several liability on both the owner and insurer.

10. Heard Sri Sricharan Telaprolu, learned counsel for the appellant-petitioner, and Sri Kota Subba Rao, learned Standing Counsel for respondent No.2-insurer. The appellant endorsed in the cause title of the grounds of appeal that respondent No.1-owner is not a necessary party to the present appeal. In that view of the matter, no notice was ordered for respondent No.1, on whom alone, liability was fastened by the Tribunal to pay compensation.

11. Now the only short point that arises for consideration is, whether the petitioner can be construed as owner of the goods?

12. A perusal of the order impugned and the material on record would clearly indicate that the petitioner boarded the lorry having purchased two sheep along with his brother so as to sell them for profit at Ongole. It is, thus, clear that the petitioner can never be construed as owner of the goods as he has not hired the lorry for the purpose of transporting such goods by paying hire charges to the owner of the vehicle, and, on the other hand, the evidence would clearly show that he paid fare to the driver of the vehicle and, thus, he can only be construed as a mid-way passenger with two sheep. Therefore, there is absolutely no legal infirmity in the

finding recorded by the Tribunal in dismissing the claim petition against respondent No.2-insurer and the same is, therefore, confirmed.

13. Accordingly, the instant appeal is dismissed confirming the order passed by the Tribunal in all respects. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

13th April, 2016

siva

[\[1\]](#) 1996(2) ALT 11

[\[2\]](#) 1996 ACJ 242

[\[3\]](#) 2002(4) Decisions Today (SC) 71

[\[4\]](#) 2004(1) ALD 98 (SC)