

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1831 OF 2005

JUDGMENT:

The present appeal is preferred by the 2nd respondent - M/s. Oriental Insurance Company Limited, Kurnool, aggrieved by the order and decree, dated 13-12-2004, in M.V.O.P. No.337 of 2003, passed by the learned Chairman, Motor Accident Claims Tribunal -cum - I Additional District Judge, Kurnool (for short 'the Tribunal'), whereby and where-under, a sum of Rs.5,00,000/- has been awarded as compensation with interest at 9% per annum holding respondent Nos.1 and 2 are jointly and severally liable to pay the same.

2. The main grievance of the appellant - Insurance Company is that, the respondent No.1, who sustained injuries was, in fact, travelling in a tractor - cum - trailer and he was, thus, an unauthorized passenger and, therefore, the Tribunal was not right in fastening liability on it.

3. The appellant and respondent No.2 herein, who are insurer and insured of Tractor – cum – Trailer bearing registration Nos.AP 21T 1020 and AP 21T 1220, are is respondent Nos.1 and 2 in M.V.O.P. before the Tribunal, while respondent No.1 is the petitioner.

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

5. The facts, in brief, are that on 03-02-2002, at about

5.30 a.m., the petitioner and two others were proceeding in a tractor -cum - trailer bearing registration Nos.AP 21T 1020 and 1220, respectively, from Noosam village to the land belonging to Srinivas Reddy for picking up Bengal-gram, and when the tractor – cum -trailer reached near the said land, since its driver drove it at high speed in a rash and negligent manner, it turned upside down, due to which, the petitioner received multiple serious injuries. He was shifted to Government General Hospital, Kurnool, and, thereafter, to Apollo Hospital at Hyderabad. Claiming that he was treated as in-patient for 10 days in Apollo Hospital and in Government General Hospital for 30 days, became permanently disabled and unable to pursue his profession as agricultural Cooli of which he was earning Rs.3,000/- per month, sought a sum of Rs.5,00,000/- as compensation against respondent Nos.1 and 2, being owner and insurer of the vehicle, respectively.

6. Before the Tribunal, respondent No.1, owner of the tractor-cum - trailer, remained *ex parte*.

7. Respondent No.2 – Insurer filed counter taking a specific plea that there has been violation of terms and conditions of policy.

8. The Tribunal framed three issues basing on the said pleadings.

9. During inquiry before the Tribunal, the petitioner besides examining himself as PW.1, has examined two doctors from Apollo Hospital and Government General Hospital, Kurnool as PWs.2 and 3, respectively, and marked Exs.A-1 to A-9. On behalf of respondent No.2, the Assistant Administrative Officer of its company, Kurnool, was examined as RW.1 and marked Exs.B-1 and B-2, which are copies of insurance policy and extract of driving license, respectively.

10. On issue No.1, the Tribunal held it in favour of the petitioner. On issue No.2, basing on the evidence of PWs.2 and 3 and documentary evidence, granted Rs.5,00,000/- as claimed under various heads which constitutes the component of future loss of earning capacity at Rs.3,06,000/- arrived at basing on the structural formula, but, somehow, observing that the respondent No.2 has not adduced any evidence to prove that there was breach of violation of policy conditions on the part of respondent No.1 did not agree with the plea taken by respondent No.2 and observing that since the

petitioner was proceeding to the field for shifting Bengal-gram, he can be construed as agricultural coolie engaged on the tractor-cum-trailer, but not as a gratuitous passenger, and thereby mulcted liability on respondent No.2 - Insurance Company even.

11. The said order is under challenge in the instant appeal mainly on the ground that the risk of labourer is not covered under the policy marked as Ex.B-1 and, therefore, sought to set aside the order and decree in so far as respondent No.2 is concerned.

12. Heard Sri Kota Subba Rao, learned standing counsel for the appellant - Insurance Company, and Sri Rathangapani Reddy, learned counsel for respondent No.1. Though, notice was served on respondent No.2, owner of the vehicle, but none appears.

13. Perused the order and the material on record, both, oral and documentary, let in by the parties.

14. As could be seen from Ex.B-1, additional liability for paid driver/workmen No.1 was covered since Rs.15/- was paid to cover the risk and so far as additional legal liability to passengers is concerned, no amount is mentioned as having been paid. The said document was exhibited through RW.1, the Assistant Manager of the Insurance Company. Therefore, nothing-else is required

to probe further to hold that the petitioner was travelling as an unauthorized passenger. Therefore, the finding recorded by the Tribunal that the petitioner was not an unauthorized passenger recorded in paragraph No.17 and that he was travelling as a coolie in the said tractor-cum-trailer cannot be sustained and the same is set aside. As a consequence, the liability fastened on respondent No.2 - Insurance Company, the appellant herein, is liable to be upset and accordingly set aside, maintaining the order and decree in all other respects.

15. As could be seen from the proceeding sheet, it is to be found that on 21-06-2005, this Court in MACMAMP No.2073 of 2005, while granting interim stay imposed a condition that the appellant herein shall deposit half of the amount awarded by the Tribunal including interest and costs; and by the order, dated 17-08-2005, while making the interim stay absolute, granted permission for withdrawal of the same by the petitioner without furnishing any security. So, in that view of the matter, it would be just and reasonable to direct respondent No.2 - Insurance Company to recover the said amount, if the same is already withdrawn, from the owner of the vehicle, who is respondent No.1 in MVOP. Further, the petitioner is at liberty to recover the rest of the amount from the owner of the vehicle.

16. With the above observation, the instant appeal is allowed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

June 22, 2016.

Mgr