

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1645 of 2009

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the appellant-petitioner aggrieved by the order and decree dated 10.01.2007, passed in M.V.O.P.No.341 of 2005 by the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Ongole (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.1,01,156/- was awarded towards compensation with interest @ 7.5% per annum, as against the claim of Rs.70,000/-, laid under Section 163-A of the Motor Vehicles Act, 1988, for the injuries sustained by him in a road accident that occurred on 31.08.2005, exonerating the 2nd respondent – insurer from the liability to pay compensation to the petitioner and fixing liability only on the 1st respondent – owner of the lorry bearing No.TN 28L 7241, in which the petitioner along with another was travelling, having sold vegetables at Hyderabad and while returning, boarded the offending lorry at Narketpalli to go to Addanki, on the ground that the Tribunal ought to have fastened liability on the 2nd respondent – Insurer also.

2. The appellant herein is petitioner, respondent No.1 is the owner of offending Lorry bearing No.TN 28L 7241; and respondent No.2 – United India Insurance Company Limited is respondent No.2 in M.V.O.P.No.341 of 2005. For the sake of convenience, the parties are referred to as they are arrayed in M.V.O.P.No.341 of 2005 before the Tribunal.

3. Heard Sri B. Parameswara Rao, learned counsel for the

appellant – petitioner, and Sri A. Ramakrishna Reddy, learned Standing Counsel for the 2nd respondent – insurer. Though notice was served on the 1st respondent – owner of the offending lorry, none appears for him.

4. Perused the order under challenge and the evidence, both oral and documentary, available on record.

5. A perusal of Ex.A-1 - FIR in Crime No.93/2005 of Tipparthy Police Station, would clearly show that the complainant – Sri Sitaramaiah and the petitioner belonging to Khammam District, transported vegetables to Hyderabad and sold them in Boinpalli Vegetable Market and returned to Narketpalli, where both of them boarded the offending lorry to go to Addanki and as the driver of the lorry drove it in a rash and negligent manner, he lost control over the vehicle, due to which the lorry turned turtle, resulting in the injuries to them. The Tribunal, having considered all these aspects, recorded a finding that the petitioner can, at best, be construed as a gratuitous passenger and thereby dismissed the claim petition against the 2nd respondent – insurer.

6. In view of the above, absolutely, there is no merit in the appeal to fix liability on the 2nd respondent – insurer, as there has been fundamental violation of the terms and conditions of the policy issued by the 2nd respondent – insurer in favour of the 1st respondent - insured, concerning the offending lorry.

7. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the order and decree dated 10.01.2007, passed by the Tribunal in M.V.O.P.No.341 of 2005. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

11.08.2016.

Msr

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