HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.417 OF 2005

JUDGMENT:

The National Insurance Company Limited - respondent No.2 in O.P. No.183 of 2000 on the file of Chairman, Motor Vehicle Accidents Claims Tribunal - cum - III Additional District Judge (Fast Track Court), Anantapur (Tribunal), challenging the order and decree, dated 23.08.2004, whereby and whereunder, an award of Rs.49,500/- was granted towards compensation as against the claim of Rs.1,00,000/- laid under Sections 140 and 166 of the Motor Vehicles Act, 1988 read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules, 1989 (for short 'the Act') preferred the instant appeal on the ground that the respondent No.1 - petitioner who said to have sustained injuries was an unauthorised passenger, which fact was not taken cognizance by the Tribunal while appreciating the evidence on record and mulcted liability on it, insurer, as such, sought to set aside the award and decree passed against it.

2. Respondent No.1 herein is the petitioner in the O.P. before the Tribunal, while respondent No.2 and appellant, who are owner and insurer, respectively, of the lorry bearing No.AP-27-7129 that involved in the accident,

are respondent Nos.1 and 2 respectively.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts, in brief are that on 16.06.1999, while the petitioner, who claimed to be a cook and caterer, aged about 40 years, along with his goods such as rice, *dhall,* vegetables, vessels etc., accompanied by his family, has boarded the lorry bearing No.AP-27-7129 at Guntakal, in order to go to Tadipatri; when the lorry was proceeding near Mushkinsha Vali Darga on Guntakal-Gooty road, since the driver of the lorry drove it in a rash and negligent manner and when an oil tanker bearing No.AP-02-T-7070 came in opposite direction, he applied brakes suddenly, on account of which, the lorry turned across and hit the oil tanker, resulting in the oil tanker crossing the road margin and going down into the fields. According to the petitioner, he sustained injuries and even others also sustained injuries and he was shifted to Government Hospital, Guntakal and from there to Government Head Quarters Hospital, Anantapur, for better treatment and he was hospitalised for more than two (2) weeks and spent lot of money, and, therefore, sought a sum of Rs.1,00,000/- as compensation.

5. Respondent No.1, owner of the lorry that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the lorry, opposed the claim raising various grounds and a specific plea was taken that the petitioner was an unauthorised and fare paid passenger in the lorry and, therefore, no liability can be fastened on it as it was not obligated to indemnify the insured in view of violation of terms and conditions of insurance policy, and, therefore, sought to dismiss the claim petition against it.

7. Based on the pleadings, the Tribunal framed the following three (3) issues in order to determine compensation as well as negligence in taking place of accident:

> "1. Whether the accident occurred on 16-6-99 due to the rash and negligent driving of Lorry bearing No.27/7129 by its driver and caused the injuries to the petitioner?
>
> 2. Whether the petitioner is entitled to compensation and if so, to that (*Sic.* what) amount and from which respondent?
>
> 3. To what relief?"

8. During enquiry, the petitioner examined himself as PW.1 and marked Exs.A-1 to A-4 and on behalf of the insurer, no oral evidence was adduced except marking a true copy of the insurance policy as Ex.B-1.

9. On issue No.1, the Tribunal held that due to rash and negligent driving of the lorry driver in which the petitioner was travelling at the relevant time, the accident had occurred, and accordingly, recorded the said finding. On issue No.2, based on the injuries described in Ex.A-2 wound certificate issued by Dr. P. Narayana Swamy, Community Hospital, Guntakal, granted a sum of Rs.1,500/- each for injuries 1 to 3, which are simple in nature, Rs.25,000/- for the fracture of right pubic rami, Rs.10,000/- for the fracture of left femur and Rs.10,000/- towards medical expenses, making a total of Rs.49,500/- with interest at 9% per annum making both the respondents jointly and severally liable to pay compensation.

10. Aggrieved by the aforesaid order, the insurer preferred the instant appeal mainly contending in the grounds of appeal that the Tribunal, somehow, overlooked the fact that the claim itself was bad for non-joinder of owner and insurer of the oil tanker bearing No.AP-02-T-7070. It is also stated that the Tribunal, somehow, went wrong in fastening liability on it, despite the evidence proving that the petitioner was travelling as a gratuitous passenger and not entitled to claim any amount from the insurer, in view of the violation of terms and conditions of the insurance policy, and, therefore, sought

to set aside the award and decree against it.

11. Heard Sri E. Venugopal Reddy, learned counsel for respondent No.2 - insurer (appellant), and Sri K. Murali Krishna, learned counsel for the petitioner.

12. Despite service of notice by way of substitute service, none appears for respondent No.2, insured. Even otherwise, respondent No.2 has suffered the decree passed by the Tribunal.

13. Learned counsel for the insurer would submit that it is a clear case that the petitioner was travelling in the goods lorry as an unauthorised passenger though, he claimed that he was travelling alongwith goods, such as rice, *dhal*, vegetables and vessels etc., along with his family members, but, when he was travelling along with the aforesaid articles and family members, certainly it cannot be construed that he was goods owner accompanying the goods.
The Tribunal, somehow, did not properly appreciate this particular aspect and, therefore, went wrong in holding that the insurer is liable to pay compensation, and, therefore, sought to set aside the award and decree under challenge.

14. Learned counsel for the petitioner would submit

that the Tribunal has not committed any error and in fact, treated the articles as goods and the petitioner as owner of the goods, and, therefore, he may not be treated as an unauthorised passenger and, thus, sought to uphold the order and decree under challenge.

15. The learned counsel for the petitioner has placed reliance on the decisions of Hon'ble single Judge of this Court in **Branch Manager, United India Insurance Co., Ltd., Medak District v. Myakala Sulochana and others**[1] and **Manne Srinivasa Rao v. Regalla Uma and another**[2]**,** but the same do not have any bearing on the instant fact situation, and would not render any assistance to defend his case.

16. The learned counsel for the petitioner has also placed reliance on the decision of this Court in **New India Assurance Co., Ltd., Tirupati, Chittoor District v. G. Sampoorna and others**[3]**,** more particularly, the observation contained in paragraph No.21, requesting to permit the petitioner to withdraw the amount already deposited in Court and direct the insurer to recover the same from the insured and making it open to the petitioner to realise the balance amount from the owner of the vehicle.

17. The observations of the Hon'ble single Judge of

this Court in **G. Sampoorna's Case** (Supra 3) and the conclusion arrived at in a similar situation contained in paragraph No.21, are thus:

> "21. Applying the said ratio to this case, a perusal of the proceeding sheet shows that this Court has granted a conditional interim order in favour of the appellant subject to it depositing half of the awarded amount and permitting respondent Nos.1 and 5 to withdraw Rs.45,000/- and Rs.30,000/- respectively without furnishing any security and directing the balance amount to be kept in fixed deposit for a period of three years in a nationalized bank. In my view, to balance the interests of both the parties, I hold that respondent Nos.1 to 5 are entitled to retain the amount of Rs.75,000/- already permitted to be withdrawn by them and also to withdraw the balance amount of compensation deposited by the appellant. The appellant is not liable to deposit further compensation. Respondent Nos.1 to 5 are entitled to recover the balance compensation from respondent No.6."

18. Keeping in view that pursuant to the directions given by this Court, dated 01.03.2005, at the stage of admission, while granting stay a condition was imposed on the insurer to deposit 50% of the amount awarded by the Tribunal within six (6) weeks from that day. Later, the stay was made absolute by the order, dated 08.07.2005. There is, of course, no direction permitting the petitioner to withdraw the deposited amount either furnishing or without furnishing security, but in **G. Sampoorna's Case** (Supra

3), the petitioner was permitted to withdraw Rs.75,000/- deposited by the insurer without furnishing any security and that amount was also withdrawn, and, in such a situation, the aforesaid observations were made.

19. In the instant case, though, there was direction while granting stay to deposit 50% of the amount awarded, but this Court refused to grant permission to withdraw the same while observing that the claimant was travelling as unauthorised passenger in a goods vehicle by the order dated 08.07.2005. In that view of the matter, even the decision relied on by the learned counsel for the petitioner would not render any assistance.

20. Therefore, the Civil Miscellaneous Appeal is allowed setting aside the order and decree under challenge so far as liability cast on the insurer (appellant - respondent No.2) is concerned, but maintaining in all other respects. The petitioner is at liberty to recover the entire compensation amount from the owner of the lorry, who is respondent No.1 in the O.P. 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

March 29, 2016.

PV/SIVA

[1] 2007 (6) ALD 738

[2] 2012 (4) ALD 251

[3] 2010 (4) ALD 586