

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.778 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal is preferred by respondent No.4 – National Insurance Company Limited (for brevity “the insurer”), challenging the Award and decree dated 22.03.2007, passed in O.P.No.1556 of 2005 by the V Additional Metropolitan Sessions Judge (Mahila Court) – cum – XIX Additional Chief Judge, City Criminal Courts at Hyderabad (for brevity “the Tribunal”), whereby and whereunder a sum of Rs.99,500/- was awarded towards compensation, as against the claim of Rs.1,00,000/- laid by respondent No.1 – petitioner under Section 166 of the Motor Vehicles Act, 1988 and Rule 455 of the Motor Vehicle Rules, 1989, for the injuries sustained by him in the accident on the main ground that the liability to pay the compensation ought to have been fixed on the Corporation, but not on it.

2. Appellant and respondent No.4 are the insurer and owner, respectively, of the offending bus bearing No.AP 10U 8287, which was hired by the A.P. State Road Transport Corporation (for brevity “the Corporation”); respondent No.1 is the claim petitioner, and respondent Nos.2 and 3 are the Corporation in O.P.No.1556 of 2005. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.1556 of 2005 before the Tribunal.

3. The fact situation would show that on 02.05.2005, at 7-10 a.m., while the petitioner was travelling in an auto from Balanagar towards Suraram side and when the auto reached near Sub-

station, Bapunagar, a bus bearing No.AP-10U-8287 belonging to the Corporation came in opposite direction in a rash and negligent manner and dashed against the auto in which the petitioner was travelling, as a result of which, the petitioner sustained grievous injuries and he was shifted to Gandhi Hospital, Secunderabad, for treatment. Therefore, the petitioner laid a claim of Rs.1,00,000/- towards compensation for the injuries sustained by him in the said accident.

4. Counters were filed by the Corporation and the insurer contesting the claim. On behalf of the petitioner, he himself was examined as P.W.1, besides examining the doctor, who treated him, as P.W.2, and marked Exs.A-1 to A-9. On behalf of the respondent – Corporation, none were examined, and whereas on behalf of insurer, except marking Ex.B-1, copy of the insurance policy, no witnesses were examined and the Tribunal, having considered the pleadings and the evidence on record, granted a compensation of Rs.99,500/- with interest at 7% per annum from the date of petition till realization, as the petitioner sustained 10% permanent disability, though P.W.2 – Doctor certified 20% disability, by taking the multiplier factor '17' and the income of the petitioner at Rs.300/- per month or Rs.3,600/- per annum, including the future loss of income, and worked-out the compensation at Rs.99,500/-. Challenging the same, the present appeal is preferred by the appellant – insurer.

5. Heard Sri T. Mahender Rao, learned Standing Counsel for the appellant – insurer, Sri C. Vikram Chandra, for respondent No.1 – petitioner; and Sri K. Madhava Reddy, learned Standing Counsel for respondent Nos.2 and 3 – Corporation.

6. The only contention advance by the learned Standing Counsel for appellant – insurer in this appeal is that no liability can be fastened on the Insurance Company and the liability can be fastened only on the respondent – Corporation, which hired the offending bus. He submits that a Division Bench of this Court in NEW INADIA ASSURANCE COMPANY LIMITED Vs. B.G. SUMA AND OTHERS^[1], held that the State Corporation, which took the bus on hire, is the owner within the meaning of Section 2(30) of the Act and liable to pay compensation. However, the learned Standing Counsel would fairly submit that in view of the pronouncement of the Hon'ble Supreme Court in RIKHI RAM V. SUKHRAN^[2], and a Full Bench decision of this Court in K.MATURA BAI AND OTHERS V. A.SHIVA NAGESWAR RAO AND OTHERS^[3] and in view of the fact that the policy covering the offending vehicle was in force, the Insurer cannot absolve from its liability to pay compensation.

7. In view of the settled legal position, there are no merits in the Civil Miscellaneous Appeal and the same is liable to be dismissed.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed, confirming the Award and decree dated 22.03.2007, passed in O.P.No.1556 of 2005 by the Tribunal in all respects, including the rate of interest at 7% per annum awarded by the Tribunal. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

28.07.2016.

Msr

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[\[1\]](#) 2004 ACJ 883

[\[2\]](#) 2003(2) ALD 71 (SC) = (2003)3 SCC 97

[\[3\]](#) 2004(3) ALD 658