HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1589 OF 2009

JUDGMENT:

The New India Assurance Company Limited-respondent No.4 in O.P. No.861 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad (for short, 'the Tribunal') aggrieved by the order and decree dated 25.08.2006, whereby and whereunder, the Tribunal fastened joint and several liability for payment of Rs.29,300/- with interest at 7.5% per annum for the injuries sustained by respondent No.1-petitioner, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') on the ground that there has been violation of terms and conditions of the insurance policy and liability ought not to have fastened on it.

2. The appellant herein, who is the insurer of the accident vehicle, is respondent No.4, while respondent No.1 herein is the petitioner, respondent Nos.2 and 3 herein, who are Managing Director and Depot Manager of the Andhra Pradesh State Road Transport Corporation, are respondent Nos.1 and 2, respectively, and respondent No.4 herein, who is owner of the accident vehicle, is respondent No.3 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 relevant facts are that on 10.03.2002 at about 9-30 a.m., the petitioner, who is driver of an auto rickshaw bearing registration No.AP 8E 4714, having taken the passengers at Uppal bus stand, started towards Tarnaka and when they reached near a club on the road, an RTC bus bearing registration No.AP 10E 4689 driven in a rash and negligent manner at high speed came from behind and dashed it, due to which, he sustained fracture of his left ankle, right knee and other injuries to his person and he was shifted to Gandhi Hospital, Secunderabad and also got treated in a private hospital. Hence, he sought a sum of Rs.1,00,000/- as compensation under Section 166 of the Act.

5. Respondent No.3- remained *ex parte* before the Tribunal.

6. A common counter was filed on behalf of respondent Nos.1 and 2 (Corporation) opposing the claim, stating that only due to rash and negligent driving of the petitioner, the accident had occasioned. Further plea raised by them is to the effect that since the vehicle was insured with respondent No.4, no liability can be fastened on the Corporation and sought to dismiss the claim petition. Respondent No.4 filed separate counter raising

various usual pleas without there being a specific plea.

7. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident.

8. During enquiry, the petitioner examined himself as P.W.1 besides examining the doctor as P.W.2 and marked Exs.P.1 to P.24 to substantiate his claim; whereas, on behalf of respondent No.4-insurer, its official from the local branch was examined as R.W.1 and marked Exs.B.1 and B.2; and no evidence is placed by respondent Nos.1 and 2 (Corporation).

9. The Tribunal, having recorded finding in favour of the petitioner on issue No.1, on issue No.2, basing on the evidence of P.W.2 proving that the petitioner sustained fracture of medial malleolus, left ankle with slight mal-union with restriction of ankle movement as described in Ex.P.22 while not giving much credence to Ex.P.22-disability certificate, placing reliance on the rulings of the Hon’ble Apex Court, held that the petitioner is entitled to Rs.29,300/- and granted the same with interest at 7.5% per annum, directing all the respondents jointly and severally liable to pay the awarded amount.

10. It is the aforesaid order which is under challenge in the instant appeal filed by respondent No.4-insurer contending in the grounds, the fact that the owner

of the bus who is respondent No.3 entering into contract with respondent Nos.1 and 2 (Corporation) was not divulged and, on the other hand, concealed it and further, since no additional premium was paid, sought to set aside the order and decree.

11. Heard Smt. A.Jayanthi, learned counsel for the appellant-insurer. No representation for respondent No.1 herein (petitioner). Though, service of notice was completed on respondent Nos.2 to 4 herein, none appears.

12. Perused the order and evidence on record. In fact, the only challenge in the instant appeal is that no liability can be fixed on the Insurance Company, as the owner of the bus neither intimated nor obtained consent from the Insurance Company to hire the bus to the Corporation. There is no need to go into the relevant details on this aspect, in view of the recent decision of the Hon'ble Apex Court in **Purnya Kala Devi v. State of Assam**[1], wherein th e Hon'ble Apex Court held in paragraph No.13 thus:

> "13. Though the above point was pressed into service, the High Court, without adverting to Section 5 of the Assam Act, merely on the basis of the definition of "owner" as contained in Section 2(30) of the 1988 Act, mulcted the award payable by the owner of the vehicle. The High Court failed to appreciate that at the relevant time the offending vehicle was under the requisition of Respondent No.1

> - State of Assam under the provisions of the Assam Act. Therefore, Respondent No. 1 was squarely covered under the definition of “owner” as contained in Section 2(30) of the 1988 Act. The High Court failed to appreciate the underlying legislative intention in including in the definition of “owner” a person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hire-purchase agreement to the effect that a person in control and possession of the vehicle should be construed as the “owner” and not alone the registered owner. The High Court further failed to appreciate the legislative intention that the registered owner of the vehicle should not be held liable if the vehicle was not in his possession and control. The High Court also failed to appreciate that Section 146 of the 1988 Act requires that no person shall use or cause or allow any other person to use a motor vehicle in a public place without an insurance policy meeting the requirements of Chapter XI of the 1988 Act and the State Government has violated the statutory provisions of the 1988 Act. The Tribunal also erred in accepting the allegation of Respondent No.2 that the vehicle was released on the date of the accident at 10.30 a.m. and the accident occurred at 10.30 a.m. without any evidence even though in the claim petition, it was stated that the accident had occurred at 10.15 a.m.”

Thus, it is clear that the liability fastened on respondent No.4 by the Tribunal cannot be faulted with. Therefore, there is no merit in the instant appeal.

13. The instant appeal is, therefore, dismissed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

22nd July, 2016

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[1] 2014 ACJ 1269