

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.997 OF 2009

JUDGMENT:

The petitioner, a boy of 14 years, in M.V.O.P.No.359 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal – cum – IV Additional Sessions Judge, Tirupati, who received bleeding injuries and sustained permanent disability in the accident that took place on 11.06.2003 at about 05:00 PM, while he was in the Mango Garden of one R. Rajamannar Reddy situated at Thati Thopu, Karveti Nagar Mandal, being hit by a lorry bearing registration No.TN-02-Y-2857, while its driver was taking reverse without properly observing the presence of petitioner, which indicates his negligent manner in taking reverse, preferred the instant appeal aggrieved by the order and decree, dated 02.02.2009, passed in the said O.P., whereby and whereunder, the Tribunal, while determining the compensation at Rs.81,500/- with interest at 7.5% per annum, fastened liability only on the owner of the lorry exonerating Insurance Company, and thus, seeks to grant the balance amount as well as to mulct liability on respondent No.2 – Insurance Company.

2. Since the manner in which the accident had taken place is not in dispute, there is no need to refer to the fact-

situation in detail and the averments mentioned in the counter filed by respondent No.2 - Insurance Company in the O.P.

3. Heard Sri P. Govind Reddy, learned counsel for the appellant, and Sri B. Devanand, learned counsel for respondent No.2 – Insurance Company. No representation for respondent No.1, when the matter is called.

4. Learned counsel for appellant submits that though, respondent Nos.1 and 2 have not placed any evidence on record to prove the violation of terms and conditions of the policy in the sense that the driver of the lorry, at the relevant time, was not holding valid and subsisting driving licence, but the Tribunal, ignoring the said fact, somehow, exonerated the Insurance Company from liability, though, the burden rests on Insurance Company to prove the violation and, therefore, requests to set aside that finding recorded by the Tribunal and mulct liability on the Insurance Company also.

5. Learned counsel for respondent No.2 – Insurance Company, as an answer to the said submission, placed reliance on the decision of the Honourable Supreme Court in **Sardari and others v. Sushil Kumar and others**^[1],

but the fact situation therein is not akin to the fact situation herein. It is clear by the narration of facts by the Honourable Supreme Court that, in fact, the tractor driver therein, by name Sushil Kumar, was examined and he had given positive admission that he was not possessing valid driving licence to drive the tractor and accepted that he had even never applied therefor.

6. In the instant case, though, burden is cast on respondent No.2—Insurance Company to prove that the driver of lorry, employed by respondent No.1, was not holding valid driving licence at the time of accident, still, it did not summon the driver nor it examined its local branch officer and failed in the direction of proving that there was omission to hold driving licence by the driver of the lorry.

7. When viewed in the light of the aforesaid circumstances, certainly, the Tribunal was wrong in recording the finding that since driver of the lorry did not possess any driving licence, respondent No.2 is not liable to pay any compensation and that only respondent No.1 is liable to pay compensation to the appellant.

8. Hence, the said finding is set aside as it is not supported by any evidence at all, leaving apart letting in any legally acceptable evidence.

9. Though, a chance could have been given by remitting the matter to the Tribunal, but the said request is not made by the learned counsel for respondent No.2. Further, at this distance of time, there could not be any occasion to remit the matter for the reason that the appellant happened to be a small boy of 14 years, who sustained injuries, and compensation was awarded by the Tribunal.

10. Hence, the appeal is allowed in part confirming the order and decree under challenge so far as the compensation determined by the Tribunal is concerned, but so far as liability is concerned, both respondent Nos.1 and 2 are jointly and severally held liable to pay compensation to the appellant.

11. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. No costs.

A. SHANKAR

NARAYANA, J

August 12, 2016.
MD

[\[1\]](#) (2008) 17 SCC 208