HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3154 OF 2009

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by respondent No.3 - M/s. New India Assurance Company Limited in M.A.T.O.P. No.635 of 2002, on the file of the Chairman, Motor Accident Claims Tribunal - cum - IV Additional District Judge (Fast Track Court - III), Khammam (for short 'the Tribunal'), aggrieved over the order and decree, dated 19-09-2005, passed in the aforesaid MATOP fastening liability on the Insurer to pay a sum of Rs.47,500/- though, the risk of the petitioner was not covered under policy marked as Ex.B-1 filed by it and, thus, seeking to set aside the order and decree passed by the Tribunal against it exonerating from the liability to pay compensation to the petitioner.

2. Respondent Nos.2, 3 and the appellant herein, who are driver, owner and insurer of tractor and trailer bearing registration Nos.AP 20T 2982 and 2983, respectively, are respondent Nos.1 to 3, respectively, while respondent No.1 is the petitioner in MATOP before the Tribunal.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in MATOP.

4. Basic facts needed for disposal of the present appeal are; on 27-03-2001, the petitioner along with other relations was proceeding on a tractor-cum-trailer bearing registration No.AP 20T 2982 and 2983 with a load of soil, and when it reached the outskirts of Kothagudem village, since the driver of the tractor, who is respondent No.1, drove it in a rash and negligent manner at high speed, he lost control over it while crossing the corner, which resulted in petitioner sustaining one grievous injury and one simple injury. He was shifted to Government Hospital, Khammam, and after initial treatment, he states that he was shifted to private nursing home at Khammam, where he has undergone surgical intervention with external fixation of steel rods and nail plates in his left leg. Therefore, he sought a sum of Rs.1,00,000/- as compensation under Section 166 of the Act

5. Respondent Nos.1 and 2, remained *ex parte* before the Tribunal.

6. Respondent No.3 opposed the claim, pleading the violation as well as the other averments mentioned in the claim petition.

7. The Tribunal framed three issues. During inquiry, petitioner examined himself as PW.1 and marked Exs.A-1 to A-3. On behalf of respondent No.3, none was examined, but, however, copy of the policy was marked as Ex.B-1.

8. The Tribunal having held issue No.1 in favour of the petitioner, on issue No.2, granted a sum of Rs.28,000/- for fracture injury and Rs.2,000/- for simple injuries; were awarded by the Tribunal, besides granting Rs.5,000/- towards pain and suffering and Rs.5,000/- towards extra nourishment, travelling and attendant charges and Rs.6,000/- towards loss of temporary earnings and another sum of Rs.1500/- towards medical expenses and, thus, a total sum of Rs.47,500/- was granted as compensation with interest at 7.5% per annum.

9. Heard Sri Kota Subba Rao, learned standing counsel for the appellant - insurer, and Sri G.L. Narasimha Rao, learned counsel for respondent No.1 - petitioner. It is mentioned in the cause title of grounds of memorandum of appeal that respondent Nos.2 and 3 are not necessary parties to the appeal.

10. Perused the order and the evidence on record, both, oral and documentary.

11. The learned counsel for the appellant would submit that the Tribunal was wrong in mulcting liability for the reason that the policy under Ex.B-1 is a special type of policy and no premium was paid to cover the risk of any person and, therefore, sought to set aside the order.

i) On quantum of compensation, the learned counsel would submit that the Tribunal was not right in granting Rs.28,000/- towards grievous injury, as the fracture of both bones recorded by the Tribunal is without any basis as Ex.A-3 does not disclose the fracture of both bones and, on the other hand, shows that an abrasion was sustained by the petitioner measuring 3” x 1½” over the left leg as grievous injury basing on X-ray. Therefore, it is his submission that the amount of Rs.47,500/- granted by the Tribunal is on higher side.

12. The learned counsel for respondent No.1 - petitioner would submit that he supports the order of the Tribunal.

13. A perusal of Ex.B-1 shows that it was a miscellaneous and special type of vehicles policy ‘A’ liability and an amount of Rs.507/- was paid towards liability to public - basic, and additional premium of trailer, a sum of Rs.127/- was paid. No other amounts were paid to cover the risk of others travelling or the owner or the employees. Admittedly, the petitioner’s case is that he was travelling as a labourer on the heap of mud loaded in the trailer. Therefore, it is clear that the risk of employees travelling in the trailer is not covered, which aspect was not taken note of by the Tribunal. The Tribunal only looking at the period of the validity of the policy under Ex.B-1, thought that there was insurance coverage as accident took place during its force.

14. Therefore, the appeal is allowed and accordingly the order and decree passed by the Tribunal are set aside so far as appellant -

respondent No.3/Insurer is concerned, while maintaining the order and decree in all other respects including the liability of the owner of the vehicle. No order as to costs.

It is seen from the proceeding sheet, in the present appeal in MACMAMP No.1102 of 2006, the appellant was directed to deposit half of the amount awarded by the Tribunal together with costs and interest within a period of six weeks from 10-03-2006, and also granting permission to respondent No.1 - petitioner to withdraw a sum of Rs.15,000/-. It is submitted by the learned standing counsel for the insurer that the said amount was already withdrawn by the petitioner. Therefore, it is desirable to observe that it is open to the insurer to recover the amount withdrawn by the petitioner from the owner of the vehicle. Respondent No.1 - petitioner is at liberty to recover balance amount from the owner of the vehicle. The balance amount, if any, lying to the credit of MATOP, the Insurer, since deposited the said amount pursuant to the orders of this Court, can seek return of the same.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

September 21, 2016.
Mgr