

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1433 OF 2009

JUDGMENT:

The present appeal is preferred by respondent No.2 in M.V.O.P. No.546 of 2003, on the file of the Chairman, Motor Accident Claims Tribunal - cum - V Additional District and Sessions Judge, Tirupati (for short 'the Tribunal'), aggrieved by the order and decree, dated 05-12-2006, seeking to set aside the same.

2. Respondent No.2 and the appellant herein, who are owner and insurer of a mini Cargo lorry bearing registration No. AP 26U 4590, respectively, are respondent Nos.1 and 2, while respondent No.1 is the petitioner in the MVOP before the Tribunal.

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

4. While granting compensation of Rs.50,000/- as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the petitioner for the damage to the trailer, the Tribunal apportioned the liability in equal halves and, thus, fastened liability on respondent No.2 - M/s. New India Assurance Company Limited, insurer of cargo lorry bearing registration No.AP 26U 4590, owned by respondent No.1 which was involved in the accident and the other amount of Rs.25,000/- equivalent to 50% of the compensation, was asked to be borne by the petitioner himself

being the owner of the tractor and trailer. The Tribunal found fault with the tractor and trailer and also found fault with the rash and negligent driving of driver of the mini lorry employed by respondent No.1. The said apportionment of liability aggrieved the respondent No.2 - Insurer and, therefore, respondent No.2 is before this Court by filing the present appeal under Section 173 of the Act, requesting to set aside the liability fastened on it, on the main ground that the petitioner was charge sheeted by the police concerned for the offence under relevant provisions and no pre-cautions as required under Section 122 of the Act were taken by the petitioner.

5. Heard Sri Katta Laxmi Prasad, learned standing counsel for the appellant - respondent No.2. Though, service was completed on respondent Nos.1 and 2, who are owners of the vehicles involved in the accident, none appears for them.

6. The learned counsel for the appellant - insurer found fault with the apportionment of liability contending that the driver of tractor and trailer belonging to the petitioner was negligent, and that alone occasioned the accident and, therefore, to set aside the order and decree.

7. Perused the order under challenge and evidence on record, both, oral and documentary, let in by the petitioner.

8. At the outset, it has to be commented that respondent No.2 - insurer, who is appellant herein, has not chosen to examine any witness, nor did it incline to file copy of insurance policy to enable the Tribunal whether any additional premium was paid, covering the third party property damage. Only in paragraph No.10 of the grounds of memorandum of appeal, it is stated that the Tribunal failed to notice that, though, the petitioner did not establish that he is entitled to more than Rs.6,000/- as the case is of property damage, and further that extra premium has been paid by respondent No.1 entitling any claim more than Rs.6,000/-, granted Rs.50,000/- compensation towards the damage to the vehicle. But, when verified the documentary evidence, respondent No.2 has not filed the insurance policy and no reasons are forthcoming as to why respondent No.2 has not chosen to file copy of insurance policy to show that no additional premium was paid covering the third party property damage. Certainly, no burden can be thrust on the petitioner to establish the payment of additional premium by respondent No.1, when violation of terms and conditions of policy governed by the contract between respondent No.1 and 2 were complained by the insurer.

9. Turning to the fact-situation, the complaint lodged by the driver of respondent No.1 would, in fact, stand adverse to the contentions raised by the learned standing counsel for the appellant - insurer. It is clear from the contents of Ex.A-1 that when the

complainant, who was employed under respondent No.1, having loaded vegetables at Duvvuru village on 07-08-2003, at about 7.00 p.m., to unload them at Nellore, and at about 11.30 p.m., when they reached Electrical Sub-station near Yerpedu village, since he was driving the mini lorry at high speed in a rash and negligent manner, he could not notice the stationed trailer by the left side of road in the focus of head lamps of lorry coming in opposite direction, and thereby he hit the trailer, which was displaced, from where it was parked, and the mini lorry, which he was driving, turned upside down and fell by the left side of the road, but he noticed that there was no tractor attached to the trailer and the persons, who were sitting inside the cabin having boarded at 7.00 p.m., with their vegetables at Renigunta check post, were struck in the lorry cabin and, therefore, he ran to the police station and lodged a complaint requesting police to take immediate action to take out the persons, who were struck in the lorry cabin. Thus, it is clear that the driver of mini lorry, which was insured with respondent No.2, was wholly negligent while driving the vehicle and drove it negligently. That can be gauged from the fact that the trailer was thrown out of the road margin and even the lorry itself turned upside down and fell outside the left side road margin.

10. Therefore, two things are clear from the manner in which the accident has taken place. First, according to the first information report lodged by him, the trailer was parked on the left side of the

road margin. Therefore, no negligence, in fact, can be attributed to the complainant. The very fact that, the mini lorry, which he was driving, itself turned upside down and fell on the left side of the road, is sufficient to prove the rash and negligent driving on the part of the driver of respondent No.1. Therefore, there is absolutely no merit in the present appeal. The submission made by the learned counsel for the appellant deserves no merit, more particularly, when the lorry driver is accused No.1, whereas, owner of the tractor and trailer is accused No.2, and the offence alleged to have committed by the petitioner was for violation of Section 122 of the Act. Therefore, it cannot be said that the Tribunal went wrong in determining the compensation of Rs.50,000/- and apportioning the same between both parties equally.

11. The appeal is, therefore, dismissed. In the circumstances, 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

September 06, 2016.

Mgr