HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.84 OF 2006

JUDGMENT:

This appeal is arising out of the order, dated 19.09.2005, in MVOP.No.172 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge at Kadapa (for short "Tribunal").

2. The appellant herein is the United India Insurance Company Limited, respondent No.2 in MVOP.No.172 of 2003. The above OP was field by the first respondent herein claiming a compensation of Rs.1,00,000/- on account of the injuries sustained by him in a motor vehicle accident. The claim was filed against respondent No.2 herein, the owner of the crime vehicle, and the insurer of the crime vehicle, the appellant herein.

3. Heard Sri V.Sambasiva Rao, learned counsel for the appellant. No arguments advanced on behalf of respondents 1 and 2 – claimant and owner of the crime vehicle.

4. Learned counsel for the appellant submits that the second respondent – owner of the jeep has violated the terms and conditions of the insurance policy Ex.B.1. The jeep was transporting Vijaya milk pockets at the time of accident. The first respondent herein boarded the jeep in midway to go to Rayachoty as a passenger. As the first respondent is a gratuitous passenger, he is not entitled to claim any

compensation against the appellant. He further submits that O.P.No.269 of 2003, which is a connected matter, has been dismissed by the Tribunal against the appellant – insurance company as there is violation of terms and conditions of the insurance policy. The Tribunal ought to have dismissed the present OP also. He also submits that the first respondent has not proved that he was earning Rs.3,000/- per month, as such, he is not entitled to claim compensation basing on his income.

5. The points for consideration in this appeal are (i) whether there are violation of terms and conditions of the insurance policy; (ii) whether the first respondent traveled in the jeep as unauthorized passenger and (iii) whether it is in violation of the terms and conditions of the insurance policy Ex.B.1?

6. For the sake of convenience, the parties shall be referred to as they are arrayed before the Tribunal.

7. The brief facts of the case are that on 31.07.2002, while the petitioner was traveling in a jeep bearing No.AP04U 3589 to attend the marriage function of his relative, the jeep met with an accident when it hit a big stone on the road due to the rash and negligent driving of the driver of the jeep, as a result of which, the petitioner received grievous injuries. The petitioner was admitted in GGH, Kadapa and was treated as in-patient for 15 days and he claimed compensation of

Rs.1,00,000/- on account of the medical expenditure and other expenditure incurred by him due to the injuries sustained by him in the accident. The second respondent filed written statement mainly contending that the petitioner traveled in the jeep as a passenger and he has violated the terms and conditions of insurance policy and, as such, the second respondent is not liable to pay any compensation.

8. It is appropriate to refer to para 14 of the award passed by the Tribunal with regard to the travel of the petitioner in the crime vehicle. Para 14 reads as follows:

> "14. It is the case and the evidence of R-2 that the petitioner is an unauthorized passenger and so insurance company is not liable to pay the compensation. From the beginning it is the case of claimant that as he is the close friend of the owner of the jeep/R-1 and in view of the marriage of the sister of R-1 and at his request, he was in the jeep for attending works with regard to marriage and on the way this accident took place. No acceptable material from R-2 in support of their plea. On perusal of record particularly F.I.R the people of R-1 travelling in the jeep and on the way, two known persons of R-1 boarded the jeep. No whisper in the record that the petitioner or the others boarded a jeep as passengers and paid fare amount. Therefore, it is clear that the petitioner is the close friend of R-1 and not a passenger. Ex.B1 is the insurance policy for the jeep and it was in force at the date of accident. R.W.1 also admitted that as per Ex.B1 policy, R-1 is entitled to carry 9 persons and the premium also paid for 9 members. So, R-1 not violated the terms and conditions of the policy. The police filed charge sheet against the driver of the jeep U/S.337 and 338 I.P.C. So, it is also clear that the driver holds valid and effective driving licence at the time of accident, otherwise the police ought to have filed the charge sheet on that count also."

9. In view of the findings of the Tribunal, Ex.B.1 is the policy covering the risk of the passengers traveling in the crime vehicle. The crime vehicle can carry 9 persons at a time and the premium was also paid for carrying 9 persons in

the vehicle as per Ex.B.1. It is the clear observation of the Tribunal that the first respondent has not violated the terms and conditions of the policy. The findings of the Tribunal are clear to the effect that the petitioner did not travel as a gratuitous passenger in the crime vehicle. Therefore, this Court is not inclined to take a different view than the observations made by the Tribunal in para 14 of its award referred above. Hence, I do not see any valid grounds to interfere with the award of the Tribunal. As far as other aspects, with regard to award of compensation, are concerned, there are no valid grounds to interfere with the award of the Tribunal.

10. In the result, the appeal is dismissed. The award, dated 19.09.2005, in MVOP.No.172 of 2003 of the Tribunal is confirmed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

G. SHYAM PRASAD, J

Date: 09.12.2016
TJMR