HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1396 OF 2009

JUDGMENT:

The New India Assurance Company Limited, represented by its Branch Manager, Khammam, who is respondent No.2 in M.A.T.O.P. No.224 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court-II), Khammam (for short, 'the Tribunal'), aggrieved over the order and decree dated 16.10.2006, whereby and whereunder, an amount of Rs.71,500/- was granted for the injuries sustained by respondent No.1 herein in a road accident, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') mainly on the ground that the claimant was not covered by the insurance policy as he was not the paid driver and also on the ground that he was not possessing valid and effective driving licence to drive passenger commercial auto at the time of accident.

2. The appellant herein, who is the insurer of the accident vehicle, is respondent No.2, while respondent No.1 herein is the petitioner, and respondent No.2 herein, who is the owner of the accident vehicle, is respondent No.1 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 facts in brief are that the petitioner hired the auto-rickshaw bearing registration No.AP 20U 2200 owned by respondent No.1-insured with respondent No.2-insurer and he was proceeding with the said auto-rickshaw towards Pakabanda bazaar and when it reached near Anjaneya Swamy temple at about 11-00 p.m., a lorry came in opposite direction driven in a rash and negligent manner at high speed, and in an attempt to avert collision with the lorry, when he moved his vehicle to the road side margin, due to the uneven edge of the road, he lost control over the same, resulting the auto turning upside down and he fell down and received fracture injuries and he was shifted to Government Hospital, Khammam and then shifted to Osmania General Hospital, Hyderabad, where he was treated as inpatient for fracture right clavicle of zygoma, fracture to mandible and fracture of post-ethmoidal lateral wall and swelling of soft and he has undergone surgical interventions and even got treated in Dr.PNVSV Prasad Hospital, Khammam.

5. On the complaint, a case in Crime No.153 of 2000, for the offence punishable under Sections 338 and 339 IPC was registered in Khammam I Town Police Station.

6. The petitioner, claiming that he spent Rs.20,000/- towards medical, operation, travelling, incidental charges, etc., and sustained 100% disability, sought a sum of Rs.1,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle.

7. Respondent No.1-owner of the vehicle remained *ex parte*.

8. Respondent No.2-insurer opposed the claim by filing a counter. In its counter, respondent No.2 claimed that due to own negligence, the petitioner sustained injuries and, therefore, no liability can be fastened on it and even the owner has not reported about the accident.

9. The Tribunal framed the following three issues:

"1. Whether the accident took place due to rash and negligent driving of the driver of vehicle (R-1)?

2. Whether the petitioner is entitled to any compensation? If so, to what amount and from which of the respondents?

3. To what relief? "

10. The Tribunal also recast the first issue thus:

"Whether the accident took place due to rash and negligent driving of the crime vehicle, by its driver?"

11. During enquiry, the petitioner examined himself as P.W.1 besides examining one Bingi Prabhakar, an eyewitness to the accident, as P.W.2 and marked Exs.A.1 to A.6; whereas, on behalf of respondent No.2, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

12. The Tribunal, on issue No.1, in fact, observed that the F.I.R. was registered against petitioner himself on the complaint lodged by respondent No.1-owner of the auto-rickshaw and held that due to rash and negligent driving of the auto-rickshaw by the petitioner, he received injuries; and, on issue No.2, just basing on the insurance policy under Ex.B.1, holding that respondent No.2 collected premium for the risk of the driver and, therefore, cannot deny its liability and having determined compensation at Rs.71,500/-, mulcted liability on respondent No.2 also to pay the said amount with interest at 7.5% per annum.

13. Heard Sri P.Bhanu Prakash, learned Standing Counsel for the appellant-insurer, and Sri Karri Murali Krishna, learned counsel for respondent No.1 herein-petitioner. Though, service was completed on respondent No.2 herein-owner, none appears for him.

14. The grounds agitated by the appellant-insurer have been referred to in the above. There is no need to once again to advert to the said grounds.

15. At the outset, it has to be mentioned that the petitioner being the driver of the auto-rickshaw and, due to his own negligence, he sustained injuries and when the auto-rickshaw over turned on account of his rash and negligent driving, but, still, he did not file the driving licence. The documents marked as Exs.A.1 to A.6 do not show marking of the driving licence, if at all held by the petitioner. In

fact, on this short ground, itself the insurer ought not have been made liable to pay the compensation.

16. The copy of insurance policy is marked as Ex.B.1. Of course, it shows that a sum of Rs.15/- was paid towards legal liability to the paid driver as per EMDT19. The evidence of P.W.1 would show that he hired the auto-rickshaw, but he was not an employee under respondent No.1. There is no positive evidence to prove that he was employed by respondent No.1 and, therefore, there is merit in the ground agitated by the insurer that he was not a paid driver, and, as such, the risk is not covered under Ex.B.1-insurance policy. The Tribunal, somehow, overlooked these two vital aspects of the case and just basing on the existence of the insurance policy under Ex.B.1, without properly appreciating the contents therein and the facts and circumstances of the case on hand, deviated and mulcted liability on the insurance company to pay the compensation. Thus, the order and decree passed by the Tribunal suffers from legal infirmity for the aforesaid reasons. Firstly, that no licence at all was filed by the petitioner to show that he held effective and valid driving licence at the time when the accident did occur. Second, he was not the paid driver of respondent No.1. Third, due to his own negligence, he caused the accident and sustained injuries.

17. The instant appeal is, therefore, allowed setting aside the order and decree dated 16.10.2006, passed by the Tribunal so far as the direction given to the insurance company to initially pay the

compensation and recover the same from the owner of the accident vehicle is concerned, while maintaining the order in all other respects indicating that respondent No.1-owner alone is liable to pay the compensation to the petitioner, but not respondent No.2-insurer. There shall be no order as to costs.

18. The proceedings sheet would reflect that on 21.06.2007, in M.A.C.M.A. M.P. No.2821 of 2007, stay was granted subject to the condition that the appellant-insurance company deposits the entire amount within a period of six weeks and in M.A.C.M.A. M.P. No.3845 of 2007 by the order dated 13.08.2007 and 1/4th of the amount was permitted to be withdrawn while making the stay absolute. Thus, the petitioner had withdrawn 1/4th of the amount deposited by the appellant-insurance company. Therefore, so far as the amount withdrawn by the petitioner-claimant is concerned, the appellant-insurer is at liberty to recover the same from the owner of the accident vehicle, who is respondent No.1 in the original petition. The petitioner is at liberty to recover the balance amount of compensation from the owner of the vehicle, who is respondent No.1 in the original petition.

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

A. SHANKAR NARAYANA, J

21st October, 2016

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