

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1894 OF 2009

JUDGMENT:

Aggrieved over the liability fixed on respondent No.2 – New India Assurance Company Limited in M.V.O.P.No.139 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Guntur, by order and decree, dated 29.07.2008, passed in the said O.P, whereby and whereunder, the Tribunal has granted a sum of Rs.1,71,000/- for the injuries sustained by the petitioner in a road accident, as against the claim of Rs.2,00,000/- laid under Section 163A of the Motor Vehicles Act, 1988 (for short, 'the Act'), the present appeal is preferred.

2. The appellant is respondent No.2, whereas respondent No.1 is the petitioner, and respondent Nos.2 and 3, who are the erstwhile and present owner, respectively, of the auto rickshaw that involved in the accident, are respondent Nos.1 and 3 in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts in brief are that on 13.11.2005 at about 07:30 PM, while the petitioner, along with others, was travelling in an auto rickshaw bearing registration No.AP-26-U-9203 to go to Sattenapalli

from Burugubanda and when the auto rickshaw reached near Vennadevi Village, since the driver of the auto rickshaw drove it in a rash and negligent manner at high speed, he lost control over the same and dashed the rear portion of right side stationed lorry bearing registration No.AP-07-T-454, due to which impact, the driver of the auto rickshaw and two passengers travelling in the auto rickshaw died instantly, whereas the petitioner sustained grievous injuries. In the first instance, the petitioner was taken to Government Hospital, Sattenapalli, and later, he was shifted to Government General Hospital, Guntur. The petitioner, claiming that he also took treatment in Peoples Trauma Hospital, Guntur, and had spent Rs.75,000/- towards treatment, laid the present claim under Section 163A of the Act.

5. Respondent Nos.1 and 3 remained *ex parte* before the Tribunal. Respondent No.2 – insurer opposed the claim requiring the petitioner to prove the allegations levelled in the claim petition.

6. Based on the said pleadings, the Tribunal has framed three issues.

7. During enquiry, the petitioner, besides, examining himself as PW.1, examined PWs.2 and 3 and got marked Exs.A1 to A9, besides Ex.X1 – case sheet. On behalf of respondent No.2, its officer from the local branch was examined as RW.1 and got marked Exs.B1 to B8.

8. The Tribunal held both issue Nos.1 and 2 in favour of the petitioner and determined the compensation by awarding Rs.75,000/- towards injuries, Rs.15,000/- towards pain and suffering and loss of amenities, Rs.70,740/- towards medical expenses and Rs.10,000/- towards transport charges, extra nourishment and attendant charges, making a total of Rs.1,70,740/-, but rounded it off to Rs.1,71,000/-.

9. The Tribunal, in the direction of fixing liability, having analyzed the evidence let in by respondent No.2 - insurer, mainly, on the ground that the competent witness to speak about the driver of the auto rickshaw did possess driving licence was the official of R.T.A. office and since the insurer failed to examine him, held that the violation alleged by the insurer, that the driver of the auto rickshaw was not holding driving licence, was not proved and basing on the decision of the Madhya Pradesh High Court in **United India Insurance Company Limited v. Annapurna Shandilya and others**¹, held that respondent No.2 is also liable to pay the compensation. Thus, the Tribunal has fastened liability on both respondent Nos.2 and 3, who are the insurer and present owner of the auto rickshaw, respectively, jointly and severally.

10. The aforesaid order is questioned in the present appeal by the insurer, mainly, on the ground that the Tribunal did not properly appreciate the evidence on record and erred in holding that the driver

¹ 2007 ACJ 1168

of the auto rickshaw did possess a valid driving licence, and that respondent No.3 was not a party to the contract of insurance and therefore, ought not to have fastened liability on it.

11. Heard Sri Naresh Byrapaneni, learned counsel for the appellant, and Sri B. Parameswara Rao, learned counsel for respondent No.1. Though respondent Nos.2 and 3 are served with notices, none appears for them.

12. There is no need to enter into the arena of findings recorded by the Tribunal, except to the extent of finding that respondent No.2 - insurer failed to substantiate the stand that the driver of the auto rickshaw did not possess driving licence. It is not in dispute that the driver also died in the said accident. No doubt, notices were sent to the legal heirs of the driver of the auto rickshaw, but merely on the ground that they stood unanswered, it cannot be said that the insurer is successful in proving that the driver of the auto rickshaw did not possess a valid driving licence. This apart, when the Insurance Company produced extract of 'B'-Register issued by the R.T.A., Guntur, marked as Ex.B8, the evidentiary rule mandates that the insurer shall examine the concerned official of R.T.A. to prove the entries in the 'B'-Register. Mere filing of extract does not amount to proving the contents thereof and, certainly, RW.1 is not a competent witness to speak about the authenticity of the contents in Ex.B8. That has been the reason, the Tribunal has held that the insurer failed to

prove the violation alleged. Hence, there is no merit in the present appeal, so as to interfere with the impugned order passed by the Tribunal.

13. Accordingly, the appeal is dismissed. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 07, 2016.
MD

