HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3150 OF 2005

JUDGMENT:

M/s. Oriental Insurance Company Limited, Kurnool - respondent No.2 in M.V.O.P. No.416 of 2004, on the file of the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Kurnool, is the present appellant.

2. Aggrieved over the order and decree, dated 02-06-2005, in the said MVOP granting Rs.2,29,738/- as compensation by fastening liability on insurer, the instant appeal is preferred, on the ground that the vehicle involved in the accident did belong to one S. Veera Reddy, who was the owner and driver of auto-rickshaw bearing registration No.AP 21V 5191, but strangely, the Tribunal overlooked the said fact finding place in FIR and charge sheet, and even the admission made by PW.1 in his cross-examination, and somehow, succumbed to the trap laid by the said S. Veerareddy, respondent No.1 and petitioner in active connivance.

3. The respondent No.2 and the appellant herein, who are owner and insurer of auto-rickshaw bearing registration No.AP 21V 6271, respectively, are respondent Nos.1 and 2, while respondent No.1 is the petitioner in

MVOP before the Tribunal.

4. For the convenience sake, the parties herein are referred to as they were arrayed in MVOP before the Tribunal.

5. The fact-situation would show that on 17-04-2004 at about 21.00 hours, the petitioner having purchased Kirana items at Adoni town, boarded an auto-rickshaw bearing registration No.AP 21V 6271 to get back to his native place Bingeri village, and when the said auto-rickshaw reached Maremma temple having crossed Virapuram village, as its driver drove it in a rash and negligent manner and was unable to control the speed, it hit the left side culvert, due to which, the auto-rickshaw turned upside down resulting in fractures to his right leg, left leg and injuries to other parts of his person. He was said to have shifted to Government Hospital, Adoni, and later shifted to Government General Hospital, Kurnool for treatment and his right leg was amputated. A crime was registered by Station House Officer, Taluk Station, Adoni. Thus, he laid a claim under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking Rs.3,50,000/- as compensation against respondent Nos.1 and 2.

6. Respondent No.1 - K. Thikkanna, owner of auto-rickshaw bearing registration No.AP 21V 6271, remained

ex parte.

7. Respondent No.2 - its insurer filed counter raising a specific plea that the auto-rickshaw was not at all involved in the accident and it was planted by managing the police concerned as the driver of the auto-rickshaw, which was actually involved in the accident, was not possessing insurance coverage and, therefore, sought to dismiss the claim petition.

8. On the strength of the said pleadings, the following three issues were framed for trial:

> " 1. Whether the accident dated 17-4-2004 took place near
> Meremma temple of Adoni Taluk at about 21.00 hours, was
> due to rash and negligent driving of the Auto bearing No.AP-21V-6271?
>
> 2. Whether the respondents are liable to pay the compensation
> claimed, if not, what amount they are liable to pay to the
> petitioner by virtue of the said accident?
>
> 3. To what relief?"

9. During inquiry, the petitioner examined himself as PW.1 and marked Exs.A-1 to A-7. On behalf of respondent No.2, its local Branch Manager was examined as RW.1 and Exs.B-1 to B-3 were marked, which are copy of insurance policy, certified copy of registration certificate issued by RTO, Kurnool and photostat copy of driving

license.

10. The Tribunal, on appraisal of evidence recorded a finding in favour of the petitioner on issue No.1; on issue No.2, determined the compensation of Rs.2,29,738/-, which includes a sum of Rs.2,04,000/- towards partial permanent disability-cum-loss of future earning capacity; Rs.15,000/- towards pain and suffering; Rs.5,000/- towards extra nourishment and Rs.5,738/- towards medical expenses. The Tribunal has also granted interest at 9% per annum to the petitioner.

11. It is the aforesaid order which is under challenge in the instant appeal preferred by the Insurer mainly contending that the auto-rickshaw bearing registration No.AP 21V 5191, belonging to
S. Veera Reddy was involved in the accident, but not the auto-rickshaw bearing registration No.AP 21V 6271 belonging to respondent No.1 - K. Thikkanna, but the Tribunal, completely ignored the fact-situation as projected in FIR, charge sheet and other documentary evidence and also the admission made by PW.1 in his cross-examination and ruled that auto-rickshaw bearing registration No.AP 21V 6271 belonged to respondent No.1. It is also stated that the auto-rickshaw of S. Veerareddy was not coverage insurance policy, and that, that was the reason the auto-rickshaw belonging to

respondent No.1 was introduced as if it was involved in the accident and the Tribunal did not consider the relevant admissions made by PW.1 in his cross-examination, but only referred to other non-committal denial in his cross-examination to the suggestion of the appellant - insurance company. It is stated that the Tribunal ought to have seen that there was no claim even for own damage for the auto-rickshaw bearing No.AP 21V 6271 and the identity of the offending vehicle was wrongly put forth by the petitioner to make a wrongful gain.

12. Heard Ms. I. Mammu Vani, learned standing counsel for the appellant – Insurance Company, and Sri Cheedella Venkat Raman, learned counsel for respondent No.1 - Petitioner. Despite service of notice on respondent No.2, none appears.

13. The grounds, which were agitated in the grounds of appeal afore-referred to, have been the submissions made by the learned counsel for the appellant, besides pointing out the admissions made by PW.1, in his cross-examination, while submitting that it is a clear case of planting a wrong vehicle with an ulterior motive to claim compensation in place of a vehicle which did really involve in the accident but without insurance coverage, in active connivance of the parties herein i.e., petitioner, respondent No.1 and the said S. Veera Reddy,

owner of other auto-rickshaw.

14. Instead of deliberating on the findings recorded by the Tribunal, in view of the grounds agitated by the appellant that the Tribunal referred to and relied on non-committal answers given by PW.1 by omitting to take note of the admissions made by PW.1, it would be appropriate to extract that portion, which the Tribunal dealt with in paragraph Nos.'7' and '8' thus:

> "7. Nothing has been elicited which is against the claim of PW.1 to the effect that the accident took place because of rash and negligent driving of the Auto in which he was travelling. With regards to the identity of the Auto about which a dispute raised, in the F.I.R. no registration number of the Auto is given and in the charge sheet, its registration number is given as AP-21/V-6271. On the other hand, it is the testimony of RW1 Asst. Administrative Officer that one Veera Reddy was the owner-cum-driver of Auto bearing registration No.AP-21/V-5191 which was actually involved in the accident on 17-4-2004 in which the petitioner and others sustained injuries and Ex.P2 is certified copy of registration certificate issued by the R.T.C., Kurnool for the vehicle and his company did not receive any information with regards to the involvement of the other Auto bearing registration No.AP-21/V-6271 in the accident. Further, it is his evidence that the petitioner and S. Veera Reddy colluded and got the Auto bearing registration No.AP-21/V-6271 roped in to get wrongful gain as the Auto bearing registration No.AP-21/V-5191 also belonging to S. Veera Reddy actually involved in the accident was not having valid insurance policy.
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> 8. There is consistency in the claim and

> evidence of the petitioner/PW1 and also in the police records to the effect that the Auto bearing registration No.AP-21/V-6271 actually involved in the accident. It is important that the concerned police officer on necessary investigation came to conclusion that the accident took place because of rash and negligent driving of the same Auto, where as the F.I.R. statement was also given to him with the same allegation. There is absolutely no basis to substantiate the claim of the second respondent/RW1 to the effect that the vehile actually involved in the accident bearing registration No.AP-21/V-6271 and the petitioner and Veera Reddy in collusion between themselves got planted the other Auto in the case."

15. A perusal of Ex.A.1 - Certified copy of FIR shows that one Mr. Veera Reddy, who owns the said vehicle, was actually driving the auto, which was involved in the accident. To the same effect, the investigation has been done by the Sub Inspector of Police, Adoni Taluk Police Station. As could be gathered from the contents of the charge sheet, when Mr. Veera Reddy is the owner of the auto-rickshaw and when he was driving the vehicle involved in the accident, respondent No.1 cannot be substituted in place of said Mr. Veera Reddy and, in fact, an attempt is made to project that the said Mr. Veera Reddy is a driver working under K. Thikkanna, who is shown as respondent No.1. Somehow, the Tribunal was carried away by the said entry, which finds place in Ex.A.2 - Certified copy of charge sheet, and fastened the liability

on respondent No.2 - Insurance Company by recording a finding to that effect, which has to be construed invariably as a finding recorded on an improper appreciation of evidence on record. Therefore, the said finding is liable to be set aside.

16. With the above observation, the appeal is allowed. There shall be no order as to costs. However, this Court while admitting the appeal on 25-11-2005 directed the appellant to deposit half of the decreetal amount awarded by the Tribunal including interest and costs. Subsequently, by order, dated 27-09-2006, while making the interim order earlier passed absolute, liberty was given to respondent No.1 - petitioner to withdraw Rs.25,000/- and the entire amount deposited towards costs and interest without furnishing any security. In view of the aforesaid orders, it would be just and reasonable to grant liberty to the appellant - respondent No.2 to recover the amount paid to the petitioner from respondent No.1 herein - petitioner. The petitioner is not entitled to recover any amount from respondent No.1 in MVOP in view of the finding tendered in the above, as the vehicle of respondent No.1 was planted in place of the vehicle of S. Veera Reddy.

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

A. SHANKAR NARAYANA, J

July 04, 2016.
Mgr/Msr