

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CIVIL MISCELLANEOUS APPEAL No.2319 of 2004

JUDGMENT :

This appeal is filed by the claimant aggrieved by the award dated 15.07.2003 in O.P.No.264 of 2001, passed by the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Nizamabad, awarding compensation of Rs.50,000/- against the claim of Rs.1,50,000/-, against the 1st respondent/owner alone.

2. The case of the claimant was that on 04.01.2000, the claimant along with others, was travelling as labourer in the Trailer bearing No.AP-25-T-3466 attached to the Tractor bearing No.AP-25-T-3465 from Dharmaraopet village to Kamareddy and when the vehicle reached the limits of Adloor at about 9 p.m., the driver drove the vehicle at a high speed and in a rash and negligent manner and thereby the vehicle turned turtle and the claimant and others received injuries. As far as the claimant is concerned, he received fractures to his left hand and left leg and consequent disability. It is averred that the accident was occurred due to the fault of the driver of the Tractor-cum-trailer. On these averments, the claimant filed O.P. against respondents 1 and 2, who are the owner and the insurer of the offending vehicle and claimed compensation of Rs.1,50,000/- as stated supra.

3. The 1st respondent remained *exparte*. The 2nd respondent/ Insurance Company filed counter and opposed the claim mainly

contending that the claimant and others travelled in the vehicle as unauthorized passengers whose liability was not covered under the terms of the policy, and therefore, the Insurance Company was not liable to pay compensation.

4. During the trial, PWs.1 and 2 were examined and Exs.A-1 to A-6 were marked on behalf of the claimant, whereas on behalf of 2nd respondent, RW1 was examined and Ex.B-1 copy of Policy was marked.

5. A perusal of the award would show that the Tribunal held that the accident was occurred due to the rash and negligent driving by the driver of the tractor-cum-trailer. So far as the quantum of compensation is concerned, the Tribunal, basing on Ex.A-3/wound certificate issued by the Government hospital, Kamareddy, held that the claimant suffered only one fracture i.e. fracture to his left humerus and other simple injuries, but he did not suffer any other fractures as deposed by PW-2. On that count, the Tribunal did not accept Ex.A-6/disability certificate issued by PW-2 certifying that the claimant suffered 50% permanent partial disability. Basing on the aforesaid observation that the claimant suffered one fracture, the Tribunal fixed compensation and awarded Rs.40,000/- for fracture injury, Rs.5,000/- towards medicines and extra-nourishment and another Rs.5,000/- towards pain and suffering, totalling Rs.50,000/-. So far as liability is concerned, the Tribunal, having taken into consideration the contention of the 2nd respondent that the claimant

and others travelled as fare paid passengers in the goods vehicle i.e. the tractor-cum-trailer, has held that since as per Ex.A-1/F.I.R. and Ex.A-2/charge sheet the claimant and others went in the vehicle to witness a movie, their risk will not be covered and 2nd respondent was not liable to pay compensation, and accordingly, fastened liability on 1st respondent alone.

6. Heard learned counsel for appellant Sri V.Venkateswar and learned counsel for respondent No.2 Sri.Srinivasa Rao Vutla and perused the material on record.

7. Learned counsel for appellant would argue that the Tribunal erred in exonerating the Insurance Company on the observation that the Insurance Policy would not cover his risk. He submitted that the claimant and others travelled in the vehicle only as loading and unloading coolies, and therefore, their risk was very much covered under the terms of the Policy. The learned counsel further submitted that the compensation awarded was also a meager one and hence, prayed to allow the appeal.

8. *Per contra*, the learned counsel for the 2nd respondent/Insurance Company would contend that as per Ex.A-2/charge sheet, the claimant and others travelled in the Tractor-cum-trailer only as unauthorized passengers as they went to witness a movie, but not as loading and unloading coolies, and therefore, the Tribunal rightly exonerated the Insurance Company. He further argued that even assuming that the claimant travelled in the vehicle as a loading and unloading coolie,

still, his risk would not be covered because Ex.B-1/Policy was only an Act Policy and no additional premium was paid to extend the coverage of Insurance to the coolies. Thus, either way, the Policy does not cover the risk of the claimant, he argued. He further argued that the compensation awarded was just and reasonable because the claimant, as per Ex.A3/wound certificate, suffered only one fracture i.e. fracture to his left humerus and there is no consequent disability and the Tribunal rightly disbelieved the self-serving evidence of PW-2 and discarded the same. He has prayed to dismiss the appeal.

9. In the light of the above referred arguments and the award passed by the Tribunal, involvement of the Tractor bearing No. AP-25-T-3465 and trailer bearing No.AP-25-T-3466 in the accident and claimant suffering injuries, is not in dispute. So far as the liability of Insurance Company is concerned, Ex.B-1/Policy would show that the Tractor and Trailer were no doubt insured with the Insurance Company by 1st respondent, but so far as the capacity in which the claimant travelled in the vehicle is concerned, in Ex.A-2/charge sheet, it is clearly mentioned that the claimant and others travelled in the vehicle as unauthorized passengers to witness a movie, hence, they were not the loading and unloading coolies at the relevant time of accident. In **New India Assurance Company Ltd. v. Asha Rani**¹, it is clearly held by the Hon'ble Supreme Court that the risk of unauthorized passengers in a goods vehicle will not be covered.

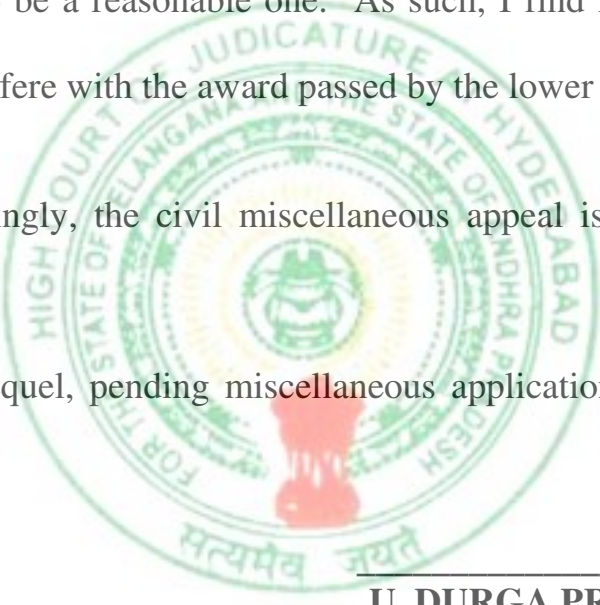
¹ (2002) 8 Supreme 594 = 2003 ACJ 1 (sC)

Therefore, the Tribunal rightly exonerated the Insurance Company from liability though the Policy was in force. I see no illegality or irregularity in the said finding.

10. So far as the quantum of compensation is concerned, the Tribunal, having observed that the claimant has suffered only one fracture i.e. fracture of left humerus, rightly discarded the evidence of PW-2 and Ex.A-6/disability certificate issued by him. In that view of the matter, the compensation of Rs.50,000/- awarded by the Tribunal can be said to be a reasonable one. As such, I find no merits in the appeal to interfere with the award passed by the lower Tribunal.

11. Accordingly, the civil miscellaneous appeal is dismissed, but no costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.



U. DURGA PRASAD RAO, J

8th November 2016

ajr