

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2848 of 2005

JUDGMENT :

Challenging the order and decree dated 14.06.2005 in O.P.No.1283 of 2001 passed by the III Additional Chief Judge, City Civil Court, Hyderabad (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.53,000/- was awarded towards compensation with interest at 6% per annum from the date of petition till realization, as against the claim of Rs.1,50,000/- with interest @ 18% per annum made under Sections 166 and 163-A of the Motor Vehicles Act, 1988, for the injuries sustained by the petitioner, the instant Civil Miscellaneous Appeal is preferred by the appellant – New India Assurance Company Limited, aggrieved by the finding recorded by the Tribunal fixing joint and several liability and also giving a direction to the Insurance Company to initially pay and then recover the amount from the 1st respondent - owner of the offending vehicle.

2. The appellant-insurer herein is respondent No.2, and respondent No.1-claimant is petitioner, and respondent No.2-owner of the offending Auto trolley is respondent No.1 in O.P.No.1283 of 2001.

3. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in O.P.No.1283 of 2001 before the Tribunal.

4. The facts, in brief, are that on 05.05.2001 at about 10.00 p.m., while the petitioner was travelling in an Auto trolley bearing No.AP 11U 8869 along with bakery manufacturing items after supplying the same to his customer at Shamshabad and returning to Hyderabad, since the driver of the said Auto trolley drove the vehicle in a rash and negligent manner and lost control, the auto turned turtle, due to which the petitioner sustained bleeding injuries to his left leg and fracture of left femur and immediately the petitioner was admitted in Osmania General Hospital and later shifted to Owaisi Hospital, Santoshnagar, where he was treated as an inpatient for about a month, that the Station House Officer of Rajendranagar Police Station registered a case in Crime No.210/2001 under Section 337 IPC. Therefore, the petitioner had filed the above O.P., claiming a compensation of Rs.1,50,000/- against the owner and insurer of the offending vehicle for the injuries sustained by him in the said accident.

5. The 1st respondent-owner of the offending Auto trolley remained exparte and the 2nd respondent-insurer filed counter opposing the claim and specifically pleaded that the said Auto trolley was built in such a manner that the driver alone can be seated and no extra passenger be accommodated in the auto and the policy was also taken without covering the risk of any passengers and, therefore, there has been violation of the terms and conditions of the policy and no liability can be fastened against it and thereby sought to dismiss the claim.

6. Basing on the pleadings, the following issues were framed

for trial.

- (1) Whether the accident occurred out of the use of the motor vehicle belonging to the 1st respondent?
- (2) Whether the petitioners are entitled to compensation? If so, to what amount and from whom?
- (3) To what relief?

7. During enquiry, the petitioner himself examined as P.W.1 and got marked Exs.A.1 to A.8. On behalf of the respondents, one Sri A. Ramakrishna, Legal Officer and Enquiry Officer from the Branch office was examined as R.W.1, and marked Ex.B.1 – copy of Insurance Policy.

8. On appraisal of evidence on record, while holding Issue Nos.1 and 2 in favour of the petitioner, the Tribunal had awarded a sum of Rs.53,000/- towards compensation with interest @ 6% per annum from the date of petition till realization with joint and several liability, however, directed the 2nd respondent-insurer to recover from the 1st respondent-owner, the amount if any, paid by it to the petitioner without filing a separate suit.

9. The aforesaid order is under challenge in the instant appeal by the 2nd respondent-insurer, contending in the grounds of appeal that having fixed joint and several liability, the Tribunal ought not to have given a direction to the Insurance Company to initially pay and then recover the amount from the 1st respondent - owner of the offending vehicle, in view of the fact that the offending vehicle

was a goods vehicle and the petitioner was sitting by the side of the driver of the offending vehicle without there being any authorisation.

10. Heard Sri T. Ramulu, learned Standing Counsel for the appellant-Insurance Company, as well as Sri B. Parameswara Rao, learned counsel for the 1st respondent-petitioner. So far as 2nd respondent – owner of the offending Auto trolley is concerned, Memo dated 30.01.2012 was filed on behalf of the appellant-insurer that since the 2nd respondent remained exparte before the Tribunal, the appeal is not pressed against her.

11. A perusal of Ex.B.1 – copy of Insurance Policy would show that no premium was paid covering the risk of passengers. In that view of the matter, certainly, no liability can be fastened against the 2nd respondent-insurer as it is not in dispute that the offending Auto trolley was a goods vehicle intended to transport bakery items to various intending purchasers in different areas. Therefore, in view of decision of the Apex Court in NEW INDIA ASSURANCE COMPANY LIMITED V. ASHA RANI AND OTHERS^[1] and NATIONAL INSURANCE COMPANY LTD., V. BALJIT KAUR AND OTHERS^[2], no liability can be fastened against the insurance company; even a direction to initially deposit the amount and then recover the same from the owner of the offending vehicle cannot be given. The decision in ASHA RANI's case (1 supra) is held to be prospective by way of clarification in the decision in BALJIT KAUR's case (2 supra).

12. Accordingly, this Civil Miscellaneous Appeal is allowed. However, as seen from the proceeding sheet, by order dated 26.01.2005, while granting interim stay, this Court directed to deposit half of the decretal amount awarded by the Tribunal, including interest and costs, after giving credit to the amount already deposited, and on such deposit, the claimant was permitted to withdraw the said amount without furnishing any security.

13. Learned Standing Counsel for the appellant-insurer submits that the petitioner has withdrawn the said amount. In view of the aforesaid order passed by this Court, the appellant-insurer is directed to recover the amount withdrawn by the petitioner from the owner of the offending Auto trolley, while holding that the 1st respondent – owner of the offending Auto trolley is liable to pay the remaining half of the amount awarded by the Tribunal.

14. Subject to the above directions, the Civil Miscellaneous Appeal is allowed. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

11.02.2016.

Msr

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[\[1\]](#) (2003) 2 SCC 223

[\[2\]](#) 2004 ACJ 428 (SC)