HON'BLE SMT JUSTICE ANIS

M.A.C.M.A. No.221 of 2008

JUDGMENT:

This appeal is filed by the appellant-Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order dated 24.04.2007, passed by the Motor Accidents Claims Tribunal-cum-Principal District Judge, Kadapa (for short 'the Tribunal'), in M.V.O.P.No.795 of 2002, awarding compensation of Rs.1,46,000/-.

2. The claimant filed the aforesaid O.P. before the Tribunal under Section 166 of the Act claiming compensation of Rs.6,00,000/- for the injuries sustained by him in a motor vehicle accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the aforesaid O.P. are as follows:

The petitioner was the resident of Jamalpalli Village, Kadapa District and was aged about 35 years. He was hale and healthy prior to the accident and was doing flower business and earning Rs.6,000/- per month. On 14.03.2002, while the petitioner along with others boarded the respondent No.1 Lorry bearing registration No.AAD 6684 in order to go to Lakkireddipalli for attending the Jathara and loaded the flower baskets at I.T.I. circle, Kadapa town, when the lorry reached near Sri Anjaneyaswamy temple at about 12.30 A.M. on 15.03.2002, one Auto stationed on the left side margin of the road and the driver of lorry while crossing the said Auto unable to control the vehicle due to rash and negligent driving. As a result, the lorry turned towards the right side of the road and the petitioner and others received serious injuries in the accident. The petitioner was shifted to the Government Hospital, Kadapa, and there he took treatment for 10 days as an inpatient. Thereafter, he was shifted to the Lakshmi Venkateswara Orthopedic Trauma Care Hospital for better treatment and there he took treatment as inpatient for 30 days and spent Rs.1,50,000/- towards medical expenses. According to the petitioner, the accident occurred only due to rash and negligent driving of the accident lorry by its driver. Respondent No.1 is the owner of lorry and respondent No.2 is the insurer and the Insurance Policy was in force at the time of accident. Therefore, both the respondents are liable to pay the compensation to the petitioner.

5. The brief averments made in the written statement, filed by respondent No.1, are as follows:

The accident lorry was insured with respondent No.2 and the petitioner is not an unauthorised passenger and he loaded his goods in the vehicle of respondent No.1 by paying hire charges and travelled along with the goods for safety. Hence, there is no violation of any terms and conditions of the policy. Therefore, the Insurance Company has to indemnify the liability of respondent No.1 in respect of the accident. The compensation claimed by the petitioner is high and excessive and finally prayed the Tribunal to dismiss the petition against respondent No.1.

6. The brief averments made in the written statement, filed by respondent No.2, are as follows:

Respondent No.2 denied all the material allegations made in the petition, filed by the petitioner, and put the petitioner to prove the manner of accident, age and income of the petitioner and the treatment taken by the petitioner due to accident. He further denied that the petitioner was doing flower business and earning Rs.6,000/- per month. According to respondent No.2, the petitioner travelled in the lorry as an unauthorised passenger and therefore, he is not entitled to claim any compensation. The compensation claimed by the petitioner is high and excessive and finally prayed the Tribunal to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 to 3 were examined and exhibits A1 to A5 were marked on behalf of the

petitioner. On behalf of the respondents, RW1 to RW3 were examined and Ex.B1 was marked.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of lorry bearing registration No.AAD 6684 and awarded a compensation of Rs.1,46,000/- with interest @ 7.5% per annum.

9. Aggrieved by the order passed by the Tribunal, respondent No.2-Insurance Company filed the present appeal.

10. Learned counsel for the appellant argued that the Tribunal failed to consider that there is a violation of policy condition and that the injured was travelling in a goods vehicle, in which the travel of passengers is not permitted, and that the Tribunal failed to consider that the injured was travelling as an unauthorised passenger and that the Tribunal erred in fastening the liability of appellant without appreciating the evidence on record and contrary to the judgments of the Apex Court and finally prayed the Court to set aside the order passed by the Tribunal. Learned counsel for the appellant relied upon the decision of the Supreme Court in **New India Assurance Company Limited v. Asha**

Rani[1], the relevant paragraph of the said decision relied on by the counsel is given hereunder:

> 28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in ***New India Assurance Co. v. Satpal Singh*** [(2000) 1 SCC 237: 2000 SCC (Cri) 130] is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid."

Learned counsel for the appellant also relied upon the decision of the Supreme Court in **Oriental Insurance Company Limited v. Devireddy Konda Reddy**[2], the relevant paragraph of the said decision relied on by the counsel is given hereunder:

> 10. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

11. On the other hand, learned counsel for respondent No.1-claimant argued that in the accident the claimant received grievous injuries and he took treatment in various hospitals by spending huge amounts and therefore, the Tribunal, after considering the evidence of PWs 1 to 3 and exhibits A1 to A5, rightly awarded the just and reasonable

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[1] (2003) 2 SCC 223
[2] 2003 ACJ 468

compensation, and the said finding of Tribunal needs no interference and prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by the learned counsel for appellant-Insurance Company as well as the learned counsel for claimant, the point arises for consideration is that whether the Tribunal is right in fastening the liability on the appellant-Insurance Company?

13. **POINT**:

A perusal of the record would show that there is no dispute that the accident was occurred on 15.03.2002 due to rash and negligent driving of the driver of respondent No.1 lorry bearing registration No.AAD 6684, in which the claimant sustained injuries. Respondent No.1 in the O.P. is the owner of aforesaid lorry and the said lorry was insured with respondent No.2 in the O.P. under a policy and it is valid from 22.09.2001 to 21.09.2002 that means as on the date of accident the policy was in force. Basing on the oral evidence produced by the claimant and also the supporting evidence of the owner of lorry, the Tribunal awarded the compensation against the Insurance Company also. The contention of the learned counsel for appellant herein-Insurance Company is that the Insurance Company is not liable to pay compensation to the risk of gratuitous passenger. The further contention is that the claimant was travelling in the aforesaid lorry as a gratuitous passenger and respondent No.1 in the O.P. being the owner of lorry not paid the premium to the risk of passengers travelling in a goods vehicle and therefore, the Insurance Company is not liable to pay compensation. It is also contended that already some amounts were paid to the claimant out of the total compensation and the Insurance Company may be permitted to recover the same from the owner of vehicle. There is no evidence on record to show that respondent No.1-owner of lorry paid the premium to the risk of passengers travelling in a goods vehicle. Admittedly, on the date of accident the injured was travelling in a goods vehicle and therefore, in view of the principles laid down by the Supreme Court in **Asha Rani**'s case (Supra 1), there is no liability for the Insurance Company to pay compensation to the gratuitous passengers travelling in a goods vehicle. Though RWs 1 to 3 supported the case of claimant that he paid the charges for the goods carried by him i.e., flower baskets, in this regard Ex.A1-copy of F.I.R. does not speak that the injured was carrying flower baskets in the said lorry. The Apex Court in **Devireddy Konda Reddy**'s case (Supra 2) held that "the provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor" and further held that it was not justified in holding that the insurer had the liability to satisfy the award. There is no evidence on record to show that respondent No.1-owner of the lorry paid the premium for covering the risk of passengers travelling in a goods vehicle. Therefore, the appellant-Insurance Company is not liable to pay compensation to the claimant.

In view of the above, this Appeal is allowed setting aside the order dated 24.04.2007, passed by the Tribunal in M.V.O.P.No.795 of 2002 against respondent No.2 in the O.P-Insurance Company. The appellant-Insurance Company is at liberty to recover the amount of compensation, which was already paid to the claimant, from respondent No.2 herein-owner of the lorry. Likewise, the claimant also can recover the balance compensation from respondent No.2 herein-owner of the lorry. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

30.01.2017
MVA