

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

MACMA.No.1859 of 2010

JUDGMENT:

This appeal is arising out of the order and decree dated 03.09.2010 in M.V.O.P.No.162 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Court, Kurnool at Nandyal (for short, 'the Tribunal').

2. This is an appeal filed by M/s. Royal Sundaram Alliance Insurance Company Limited, the second respondent in M.V.O.P.No.162 of 2007. The said Original Petition was filed under Section 166(c) of the Motor Vehicles Act, 1988 (for short, the Act), claiming compensation of Rs.1,00,000/- on account of injuries received by the claimant in the motor vehicle accident that took place on 27.11.2006.

3. The parties hereinafter are referred to as they are arrayed in the Original Petition.

4. The brief facts of the case are that on 27.11.2006 while the petitioner along with other Hamalies was proceeding in the Tractor and Trailer bearing No.AP 21 U 1392 and AP 21 U 1393 to unload the napa stones at Gur Reddy Slab Factory, when they reached Banaganapally-Bethamcherla road near Bathulurupadu, SRBC Bridge, driver of the vehicle drove it in a rash and negligent manner with high speed and dashed against a Hero Honda motorcycle bearing No.AP 21 H 1375, as a result, the petitioner and other hamalies, who sat on the napa stones in the trailer, fell down and sustained injuries and one hamali died on the spot. The petitioner was aged about 30 years and he was hale and

healthy and was earning Rs.150/- per day. He incurred medical expenditure of Rs.30,000/-. On coming to know about the accident, police of Banaganapalli Police Station registered a case in Crime No.168 of 2006 against the driver of the tractor and trailer.

5. The 1st respondent remained *ex parte* before the Tribunal. The 2nd respondent - insurer has filed a counter denying the allegations made in the petition including age, occupation and income of the petitioner and also denied the expenditure incurred by him for his treatment. It is the contention of the 2nd respondent that the petitioner travelled as an unauthorized passenger in the trailer. It is also stated that Hamali is not permitted to sit on the top of the load and policy does not cover the risk of hamalies and unless the driver of the crime vehicle possesses valid and effective driving licence and there is no violation of policy conditions, the Insurance Company is not liable for payment of compensation. The claim of the petitioner is excessive and therefore, sought for dismissal of the petition.

6. During the course of enquiry, on behalf of the petitioner, PW.1 was examined and got marked Exs.A.1 to A.5. On behalf of the respondent No.2, RW.1 was examined and got marked Ex.B.1.

7. On consideration of the evidence, the Tribunal awarded compensation of Rs.63,000/- with interest at 6% per annum fixing the liability against respondents 1 and 2. Challenging the liability fixed against respondent No.2, the present appeal is filed.

8. Heard the arguments of Sri Kota Subba Rao, learned Standing Counsel for the appellant – insurance company, and Sri B.S.Reddy, learned counsel for respondent No.2 herein-owner of the crime vehicle.

9. Learned Standing Counsel for the appellant submits that the tractor and trailer, which involved in the accident, was meant for agricultural purpose, but the said vehicle was used for commercial purpose, as the vehicle was carrying lime stones in it at the time of accident, the same is in violation of the terms and conditions of the insurance policy and the policy does not cover the risk of the persons travelling in the tractor.

10. On the other hand, Learned counsel for the 2nd respondent herein-owner of the crime vehicle, submits that since the Tribunal has awarded meager compensation of Rs.63,000/-, the same may be confirmed.

11. On consideration of the arguments of the learned counsel for the appellant and the respondents, it is obvious that the Tribunal held issue No.1 in favour of the claimant holding that the accident occurred due to rash and negligent driving of the driver of the tractor and trailer and awarded compensation of Rs.63,000/-. It is also obvious that the accident occurred out of use of motor vehicle for public purpose. The rash and negligent act on the part of the driver of the motorcycle was proved. The person involved in the accident is said to be a hamali worker on the tractor. The Tribunal has held that respondents 1 and 2 are liable to pay compensation jointly and severally.

12. In view of the fact that the Tribunal after considering the material on record, awarded compensation of Rs.63,000/, I do not see any valid reason to set aside the award passed by the Tribunal. However, in the light of the decision in National Insurance Company Limited v. Baljit Kaur and others¹ and Manuara Khatoon v. Rajesh and others², it is appropriate to order pay and recovery in this case.

13. Keeping in view the ratio laid down in the above decisions, the appellant/insurer is directed to pay the amount at the first instance to the claimant and recover the same from the owner of the crime vehicle.

14. In the result, the appeal is allowed in part modifying the order and decree passed by the Tribunal by directing the 2nd respondent to pay the compensation amount to the claimant at the first instance and recover the same from respondent No.1 herein-owner of the vehicle.

Miscellaneous petitions, if any pending, shall stand closed.

There shall be no order as to costs.

GUDI SEVA SHYAM PRASAD, J

Date:13.04.2017
INL

¹ (2004) 2 SCC 1

² 2017(2) ALD 65 (SC)