HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 1419 of 2006

JUDGMENT:

This appeal is arising out of the order dated 06.04.2006 in O.P.No.53 of 2002 on the file of Motor Accident Claims Tribunal (District Judge), at Nizamabad (for short, 'the Tribunal). The appellant-United India Insurance Company is the 2nd respondent in the said O.P.

2. The claimant, who is an 8 year old minor boy named Panja Madhu under the Guardianship of his mother, filed a Claim Petition O.P.No.53 of 2002 before the Tribunal claiming a compensation of Rs.5,00,000/- on account of the injuries suffered by him in a motor vehicle accident that occurred on 26.05.2001. Brief facts of the case are that on 26.05.2001, the claimant, along with his parents and sister, was traveling in the lorry bearing No.AP-36T-5355, and when the lorry reached near Vadloor Yellareddy Cheruvu on National Highway No.7 at about 7:45 AM, the driver drove the lorry at a high speed and lost control over the lorry and dashed his lorry to another lorry bearing No.DL-1/GB-4950 coming from opposite direction. As a result, the claimant sustained multiple injuries to both his legs, crush injuries to left leg, fracture injury to skull, ribs, apart from multiple and grievous injuries to his body. His father also received injuries and subsequently succumbed to the injuries. The claimant was immediately shifted to Government Civil Hospital, Kamareddy, where he was administered first aid and later he took treatment at Siddharta Hospital, Siddipet, and there he was treated as inpatient and he underwent operation to his left leg, and his left leg was amputated upto knee level and he incurred Rs.1,50,000/- for his treatment. Alleging that the accident occurred only due to the rash and negligent driving by the

driver of the lorry bearing No.AP-36T-5355, the claimant filed the said Claim Petition against respondent Nos.1 and 2, who are the owner and insurer, respectively, of the lorry bearing No.AP-36T-5355.

The 1st respondent-owner of the lorry remained exparte. The 2nd respondent-Insurance company filed its written statement denying the averments made by the claimant in his Claim Petition and contending that the claim made by the claimant is exorbitant and that the driver, owner and insurer of the other lorry should also be made parties to the Claim Petition.

In support of his case, the claimant got examined PWs.1 and 2, and got marked Exs.A1 to A6 and Exs.C1 and C2 on his behalf. RW1 was examined on behalf of the 2nd respondent-Insurance company and Exs.B1 to B4 and Ex.X1 were marked on its behalf.

The Tribunal, on consideration of the oral and documentary evidence available on record, partly allowed the petition by awarding a compensation of Rs.4,07,353/-, with proportionate costs and interest at 7.5% per annum, making respondents 1 and 2 jointly and severally liable to pay the compensation. The 2nd respondent-Insurance Company being aggrieved by the award of the Tribunal and denying its liability to pay compensation and seeking exoneration of its liability preferred this appeal.

3. Heard the learned counsel Smt. A. Malathi, appearing for the appellant-Insurance Company. Though notice was served on the 1st respondent-claimant and Sri V. Tulasi Reddy, advocate, entered appearance on his behalf, there was no representation and no arguments were advanced inspite of affording sufficient opportunity. The case against 2nd respondent-owner of the lorry stood dismissed for default as per order dated 28.06.2016 for non-service of notice.

4. The points for consideration in this appeal are:

(i) Whether the appellant-Insurance Company is entitled to be exonerated from the liability of payment of compensation?
(ii) Whether the compensation awarded by the Tribunal is exorbitant?
(iii) Whether the principle laid down in National Insurance Co. Ltd., v. Bommithi Subbhayamma and Others[1] is applicable to the facts and circumstances of the present case.

5. Learned counsel for the appellant mainly contended that the crime lorry is a goods-carrying vehicle and the claimant traveled in that vehicle at the time of accident. He further contended that the owner of the lorry did not pay additional premium for coverage of risk of the passengers who travel in his goods-carrying lorry. Therefore, the appellant is not liable to pay any compensation to the claimant as there is no coverage of risk of the passengers traveling in goods-carrying vehicle.

6. Learned counsel for the appellant placed reliance on the decision in Bommithi Subbhayamma (1 supra), and submitted that the appellant is entitled to recover the amount of compensation granted in favour of the claimant. Paragraphs 9, 10 and 11 of Bommithi Subbhayamma (1 supra) read as under:

> ***"9. The question again came up for consideration before a 3-Judge Bench of this Court, of which we are members, in National Insurance Co. Ltd. v. Baljit Kaur and Ors., wherein upon considering the effect of amendment carried out in Section 147 of the Motor Vehicles Act, 1988 by Motor Vehicles (Amendment) Act, 1994, it was opined:***
>
> > ***"17. By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by***

[1] (2005) 12 SCC 243

reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, therefore, could not have been that the words 'any person' occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression 'any person' contained in Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

The observations made in this connection by the Court in Asha Rani case (supra) to which one of us, Sinha, J, was a party, however, bear repetition:

"26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore."

In Asha Rani (supra) it has been noticed that Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the

> ***passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also the owner of the goods for his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.***
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> ***It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people."***

10. The same view was reiterated in National Insurance Co. Ltd. v. Challa Bharathamma and Ors.[2]; Pramod Kumar Agrawal and Anr. v. Mushtari Begum (Smt.) and Ors.[3], and also in National Insurance Co. Ltd. v. V. Chinnamma and Ors[4].

11. In view of the aforementioned authoritative pronouncements of this Court, the impugned judgment of the High Court cannot be sustained which is set aside accordingly. This Appeal is allowed. We, however, make it clear that claimants-respondents will be entitled to recover the amount of compensation granted in their favour by the Motor Vehicle Accidents Claims Tribunal from the owner of the vehicle. No costs.

[2] 2004 (8) SCC 517
[3] 2004 (8) SCC 667
[4] 2004 (8) SCC 697

7. Learned counsel for the appellant also placed reliance on the decision reported in National Insurance Company Limited v. Savitri Devi and Others[5], and submitted that, in the said case, it was held that the liability cannot be fastened on the Insurance Company for payment of compensation. He further submits that even though the vehicle was insured only as a "goods carrying vehicle", but the vehicle was carrying passengers on a regular basis for a long period, the Insurance Company could not be held liable to pay the compensation.

8. The facts of Savitri Devi (5 supra) are different and therefore not applicable to the facts of the present case. In the instant case, the injured-claimant traveled in a vehicle which is said to be "goods carrying vehicle".

9. Learned counsel for the appellant, placing reliance on the decision reported in National Insurance Co. Ltd., v. Cholleti Bharatamma and Others[6], contended that the words *"injury to any person"* in Section 1(b) would only mean a *"third party and not a passenger traveling on a goods carriage whether gratuitous or otherwise"*. On this proposition of law, it is contended that the injured traveled in a goods vehicle as a "gratuitous passenger" or a "passenger" and therefore the insurance company is not liable to cover the risk of the passenger who traveled in a goods carriage, and therefore the injured is not entitled to claim any compensation.

10. As far as the liability of the insurance company is concerned, the Tribunal, in paragraph 11 of the impugned order, held as under:

[5] (2013) 11 SCC 554
[6] (2008) 1 SCC 423

> ***"11. The second respondent examined RW1 T.Rajendra Sarma Senior Assistant in R2 Company. In the evidence RW1 has stated that R2 Company issued Policy for the vehicle bearing No.AP-36/T-5355 belonging to R1, which was registered as Commercial Heavy goods vehicle. As per the police investigation the driver of the lorry is having licence for driving light motor vehicles and he was not authorized to drive heavy motor vehicles. He filed Ex.B1 copy of policy, Ex.B2 copy of driving licence, Ex.B3 investigation report, Ex.B4 M.V.I. report. He also stated that R1 violated the terms and conditions of the policy, as such the R2 Company are not liable to pay compensation.***
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> ***In the cross examination RW1 stated that R2 Company did not issue any notice to the driver of the lorry to produce driving licence, owner also did not produce driving licence. In another case O.P.11/02 filed for the same accident was disposed off and they have deposited 50% of the awarded amount."***

11. The Tribunal has clearly observed that the 2nd respondent Insurance company did not issue any notice to the driver of the lorry to produce driving licence. The owner of the lorry also did not produce driving licence. In the absence of driving licence of the driver of the lorry, the Tribunal could not come to the conclusion whether the driver was possessing licence to drive LMV or HMV or Transport Vehicle. In this regard, the Tribunal, in paragraph 12 of the impugned order, held as under:

> ***"12. Ex.X1 copy of driving licence received from the Deputy Transport Commissioner and Secretary, R.T.A., Warangal reveals Srinu, driver of the vehicle involved in the accident was authorized to drive heavy goods vehicle***

> ***with effect from 13.11.2000. Admittedly, the accident took place on 26.5.2001, therefore, it is clear by the date of accident the driver of the lorry is having valid driving licence. Therefore, the contention of the second respondent Company that the driver of the lorry was having L.M.V. licence cannot be accepted. In view of Ex.X1 driving licence produced from the Deputy Transport Commissioner and Secretary R.T.A, Warangal, the driver of the lorry is having valid driving licence."***

12. It is very clear from the observation of the Tribunal in paragraph 12 of the impugned order that the driver of the crime vehicle was authorised to drive heavy goods vehicle w.e.f. 30.06.2000 whereas the accident took place in 2001 and, therefore, by the date of accident, the driver of the crime vehicle was authorized to drive the heavy goods vehicle.

13. Therefore, there is no force in the contention raised by the appellant that the driver of the crime vehicle did not possess the licence to drive heavy goods vehicle. In this regard, the findings of the Tribunal do not require any interference.

14. The Tribunal, in paragraphs 17, 18 and 19 of the impugned judgment, observed as under:

> **"17. The petitioner examined PW2 Dr. V. Akhilesh, orthopedic surgeon, govt. Hospital, Nizamabad. In the evidence PW2 has stated that on 09.02.2005 he examined the petitioner Madhu, he verified the previous medical record and found post traumatic left knee disarticulation, tenderness and also right ankle stiffness, causing inability to walk without support, unable to stand properly and difficulty in squatting. He assessed the disability at 62%, which is permanent.**
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> **He further stated that Ex.C1 disability certificate is issued by him. The injuries mentioned in Ex.A3 and A5 are**

corresponding to the disability certificate. He further stated that on 04.3.2005, the petitioner approached the Medical Board, he along with other members assessed the disability at 60% permanent. Thus as per Ex.C2 disability certificate issued by the Medical Board, the percentage of disability sustained by the petitioner is 60%.

18. Though PW1 mother of the petitioner has stated in her evidence that the injured petitioner was selling milk and earning Rs.3000/- per month but she did not adduce any kind of evidence in support of her contention. As per the claim petition filed by the injured petitioner through PW1 who is his guardian, the injured petitioner is aged 8 years only. In the absence of any evidence with regard to the income, it may be treated that the injured petitioner is non-earning member. But the fact remains, due to amputation of the left leg up to knee, he requires the support and artificial leg throughout his life to attend to his normal work, he requires assistance of somebody, his marriage prospects are impaired and he has to depend on some others during his childhood. Unfortunately in the same accident, he lost his father also who was earning member of the family.

19. Considering the amputation of left leg up to the knee, age of the petitioner and period of treatment and other circumstances, I feel it just and reasonable to award compensation of Rs.3,00,000/- (Rupees Three Lakhs) towards disability, Rs.1,00,000/- (Rupees one lakh) towards pain and suffering and Rs.7,353/-, (Rupees seven thousand three hundred and fifty three) towards medical expenses as per Ex.A4 medical bills filed by the petitioner. The petitioner is therefore, held entitled to total compensation of Rs.3,00,000 + Rs.1,00,000 + Rs.7,353 = Rs.4,07,353/- (Rupees Four Lakhs seven thousand three hundred and fifty three) payable by the respondents 1 and 2 jointly and severally with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of realisation.”

15. There is no material on record to show that the compensation awarded by the Tribunal is exorbitant. The compensation awarded by the Tribunal is reasonable. The case of Bommithi Subbhayamma (1 supra) is not applicable to the facts of the present case.

16. Therefore, there are absolutely no grounds for the insurance company for setting aside the judgment of the Tribunal, and the appeal is liable to be dismissed.

17. In the result, the appeal is dismissed. No costs. Pending miscellaneous petitions, if any, shall stand closed.

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GUDI SEVA SHYAM PRASAD, J

March, 2017

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 1419 of 2006

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