HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.182 OF 2005

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellant, who is the petitioner in M.V.O.P. No.943 of 2000, laid under Section 166 of the Act, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge East Godavari at Rajahmundry (for short, 'the Tribunal'), aggrieved by the order dated 30.10.2004, whereby the Tribunal while granting compensation of Rs.72,000/-, against the original claim of Rs.3,00,000/-, for the injuries sustained by him in a motor accident occurred on 11.07.2000, directed that the respondents 1 and 2 are jointly and severally liable to pay the same with interest at the rate of 7% p.a. from the date of petition till the date of deposit and dismissed the claim against the 3rd respondent.

2. Appellant herein is the petitioner; 1st respondent herein is the driver, 2nd respondent herein is the owner, and the 3rd respondent herein is the insurer of Matador van bearing registration No.TN 37 H 3132 (For short, 'the crime vehicle').

3. Heard Sri N.Vijay, learned counsel for the appellant-petitioner, Sri K.Ashok Rama Rao, learned standing counsel for the 3rd respondent-insurer and perused the record. The appeal against the 1st respondent-driver of the crime vehicle was dismissed for default on 02.01.2012. In spite of service of notice on behalf of the 2nd respondent-owner of the crime vehicle, none entered appearance and there is no representation on his behalf.

4. The case of the petitioner, in brief, is that on 11.07.2000, at about 09-00 p.m., when the petitioner, who was working as Sub-Divisional Engineer in B.S.N.L., along with other employees was returning in the crime vehicle to Kakinada, the crime vehicle, being driven by its driver in a rash and negligent manner, dashed a stationed lorry near Super Gas factory on ADB Road near Peddapuram and turned turtle resulting in severe injuries to the petitioner and two others including death to one of their colleagues. Thereafter, a case in Crime No.109 of 2000 for the offences under Sections 304-A and 337 I.P.C. was registered by the S.H.O. Peddapuram Police Station against the 1st respondent. The petitioner sustained injuries to his head and hip, underwent treatment as inpatient for about one month in a private hospital, incurred an amount of Rs.50,000/- towards medical expenses. The accident took place due to the rash and negligent driving of the driver of crime vehicle, filed the petition against the Respondent Nos.1 to 3, being the driver, owner and insurer of the crime vehicle, seeking compensation of Rs.3,00,000/-.

5. Respondent Nos.1 and 2, driver and owner of the crime vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.3, insurer of the crime vehicle, filed counter and additional counter denying material allegations of the petition *inter-alia* contending that manner of the accident, age, occupation and earnings of the petitioner, sustaining injuries, undergoing treatment as inpatient and incurring medical expenditure be put to strict proof of the same. It was further contended in the additional counter that the crime vehicle is only a goods vehicle got insured with their Branch Office at Chennai covering the risk of third parties for the period from 03.08.1999 to 02.08.2000 and subsequently the 2nd respondent-owner changed the permit to carry 5 passengers in the vehicle without putting on information the 3rd

respondent. So, the 3rd respondent-insurer is not liable to indemnify the 2nd respondent-owner as there was no contract of insurance between 2nd respondent and 3rd respondent and contended that the compensation claimed is excessive and exorbitant, sought for dismissal of the petition.

7. The petitioner filed rejoinder stating that the crime vehicle was validly insured with the 3rd respondent, the petitioner was travelling in the crime vehicle in discharge of his official duty as employee of the B.S.N.L., who obtained the crime vehicle on hire purchase agreement and the 3rd respondent cannot avoid its liability to pay the compensation to the petitioner.

8. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2, R.Ws.1 to 4 and the documents Exs.A.1 to A.7, Ex.B.1 and Exs.X.1 to X-9, awarded the compensation of Rs.72,000/- (*i.e.,* Rs.32,000/- towards medical expenses, Rs.35,000/- towards pain, suffering and mental agony and an amount of Rs.5,000/- future operational expenses) directed that the respondents 1 and 2 are jointly and severally liable to pay the same with interest at the rate of 7% p.a. from the date of petition till the date of deposit, dismissed the claim against the 3rd respondent.

9. Learned counsel for the appellant-petitioner would submit that the Tribunal failed to see that the crime vehicle involved in the accident is not a goods vehicle it is a passenger's vehicle. The principle that a gratuitous passenger travelling in the goods vehicle is not entitled to compensation from the insurer cannot be applied to the facts of the case on hand. There is no dispute from the 3rd respondent-insurer that the crime vehicle is not a passenger's vehicle and it is only a goods vehicle. The Tribunal failed to see the purport of '*any passenger*' used in Section 147 of the Act, which

includes a passenger travelling in any vehicle. The Tribunal failed to observe that the ratio laid down by the Apex Court in ***New India Assurance Company Limited Vs. Asha Rani and others***[1] has no application to the case on hand. The crime vehicle involved in the accident is a Matador van *i.e.,* a passengers vehicle but not a goods vehicle. The Tribunal failed to see that the Motor Vehicles Act is a beneficial legislation and ought to have fastened the liability against the 3rd respondent-insurer also. The main submission of the learned counsel for the appellant-petitioner is that the 3rd respondent-insurer is also liable to pay compensation to the petitioner.

10. On the other hand, learned standing counsel for the 3rd respondent-insurer would contend that though there is subsistence of a valid insurance policy, it relates to goods vehicle. Earlier the crime vehicle was a goods vehicle and the same was converted into a utility van. To cover the risk of passengers travelling by the crime vehicle, no insurance policy was obtained by the 2nd respondent-owner after conversion. The insurance policy of crime vehicle is only an act policy covering the goods vehicle. The Tribunal has analyzed the entire evidence on record relying on number of decisions and rightly concluded that the respondents 1 and 2, driver and owner of the crime vehicle, are liable to pay compensation to the petitioner and rightly dismissed the claim against the 3rd respondent-insurer.

11. The evidence of R.W.2 reveals that originally the crime vehicle was registered as a light motor goods vehicle. On 17.05.2000, the registration of the crime vehicle was changed from light motor goods vehicle to motor utility van to carry 5 persons. Ex.X-2 – copy of permit extract and Ex.X-3 - copy of C-book extract reveals the same. Therefore, it is clear from the

[1] 2003 (2) SCC 223

evidence on record that initially the crime vehicle was a goods vehicle. On 17.05.2000, it was converted to utility van permitting to carry 5 persons. Ex.B-1 is the copy of insurance policy of the crime vehicle wherein it is mentioned that the crime vehicle is a goods vehicle; premium was paid to cover the liability of public *i.e.,* to cover the risk of third parties.

12. The evidence of R.W.1, Assistant Administrative Officer, working in 3rd respondent-insurer office, Rajahmundry, reveals the terms and conditions of the policy of the crime vehicle. As per which, the crime vehicle is a goods vehicle; there is no mention of change of insurance covering the risk of passengers travelling by the crime vehicle. Respondent No.2 having purchased the crime vehicle brought it to Rajahmundry got changed the permit from goods vehicle to utility van to carry 5 persons. Respondent Nos.1 and 2, driver and owner of the crime vehicle, failed to inform the conversion of crime vehicle from goods vehicle to utility van and 2nd respondent has not even paid any premium covering the risk of persons travelling by the crime vehicle. The 2nd respondent only entered into a contract of agreement with B.S.N.L. to provide the crime vehicle for use of its employees on certain terms and conditions. B.S.N.L. is not made a party to the petition before the Tribunal.

13. The Tribunal while relying on number of decisions, considering the facts and circumstances of the case, held that the crime vehicle belonging to 2nd respondent is validly insured with the 3rd respondent-insurer only as a goods vehicle. Respondent No.2 changed the use of crime vehicle from goods vehicle to utility van to carry 5 persons but he has not intimated the same to the 3rd respondent-insurer and obtained fresh policy of insurance to cover the risk of passengers, being carried thereby. Ex.B-1 policy of insurance does not cover the risk of employees travelling in the crime vehicle. There is no contract of insurance between respondent Nos.2 and

3 to indemnify the respondent No.2 in case of any accident *etc.,* by 3rd respondent. For absence of any contract of insurance between respondent Nos.2 and 3, 3rd respondent is not liable to pay any compensation to the petitioner, as insurer, and respondent Nos.1 and 2, being driver and owner of the crime vehicle, are alone jointly and severally liable to pay compensation to the petitioner. Admittedly, there is no policy of insurance covering the risk of passengers travelling by the crime vehicle, as on the date of accident. The concerned personnel of B.S.N.L. who entered into a contract of agreement with the 2nd respondent failed to very the records before hiring the crime vehicle for use of their employees. There are laches on their part also in not providing a vehicle having insurance to carry their employees. The persons who are travelling by the crime vehicle met with the accident are not gratuitous passengers. The facts of the case on hand are distinct from facts of the case in ***Asha Rani*** (1 supra). In the facts and circumstances of the case, as there is no contract of insurance between 2nd respondent-owner and 3rd respondent-insurer to cover the risk of passengers travelling by the crime vehicle, no liability can be fastened against the 3rd respondent-insurer. The Tribunal has assigned valid reasons relying on number of decisions and rightly directed that the 1st and 2nd respondents are alone jointly and severally liable to pay the compensation. There is no infirmity in the impugned order and there is nothing to take a different view and tag the liability against the 3rd respondent-insurer. Hence, the Appeal is devoid of merits and is liable to be dismissed.

14. In the result, the Appeal is dismissed confirming the order dated 30.10.2004 passed in M.V.O.P. No.943 of 2000 by the Tribunal.

15. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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Dr. SHAMEEM AKTHER, J

Date: 04.10.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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