THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. Nos. 2118, 2139 and 2334 of 2012

COMMON JUDGMENT:

These appeals are preferred by the claimants against the order dated 17.04.2012 passed in O.P.Nos.735, 734 and 733 of 2005, respectively, by the Motor Accidents Claims Tribunal (III Additional District Judge)(FTC), Nizamabad. As these appeals are arising out of a common accident, they are heard together and are being disposed of by this common judgment.

2. Brief facts of the case are that on 04.04.2005, the petitioners-claimants were proceeding towards Nizamabad from Mayapoor with turmeric and other agricultural produce in Mini Goods lorry bearing No.AP25-T-5828. When the lorry reached near Mysamma temple at Mayapoor village shivar, the driver of the lorry drove it in a rash and negligent manner at a high speed and lost control of the vehicle thereby the lorry turned turtle. The petitioners-claimants fell down and sustained grievous injuries.

3. The petitioner-claimant Smt. Bogguta Rajubai filed O.P.No.735 of 2005 under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, the MV Act) claiming compensation of Rs.3,00,000/- (but paid Court Fee for only Rs.2,00,000/-) on account of the injuries sustained by her in the said accident. The petitioner-claimant Jakka Mallaiah filed O.P.No.734 of 2005 claiming compensation of Rs.2,00,000/- on account of the injuries sustained by him in the said accident. The petitioner-claimant Sirikonda Poshetty filed O.P.No.733 of 2005 claiming compensation of Rs.2,00,000/- for the injuries sustained by him in the accident. In the aforestated original petitions, the petitioners averred that they were doing business in goats and agriculture and their income was Rs.10,000/- per month each, and due to the injuries sustained by them they are not in a position to lift weight and unable to walk properly, and therefore they lost their earning capacity.

4. The 1st respondent is the owner of the crime lorry. He filed counter denying his liability stating that in case if the claim petition is allowed the 2nd respondent would pay the compensation.

5. The 2nd respondent-United India Insurance Company Limited, filed counter denying its liability and the manner in which the accident occurred and the involvement in the 1st respondent's vehicle in the accident. The petitioners

were put to strict proof of their age, income and occupation. It is stated that the crime lorry was not having certificate of fitness, valid permit and therefore the same is violation of terms and conditions of the insurance policy. The petitioners were put to strict proof of injuries received and the expenditure incurred by them for treatment. It is further stated in the counter that the insurance policy does not cover the risk of the petitioners as the petitioners travelled in the goods vehicle as such the insurance company is not liable to pay any compensation. It is also stated that the claim of the petitioners is highly excessive and therefore sought for dismissal of the petitions.

6. In O.P.No.735 of 2005, the Tribunal, on consideration of the evidence of PWs.1 and 2, and RW1, and the documents Exs.A1 to A7, Exs.B1 and B2, held that the accident occurred due to the rash and negligent driving by the driver of the crime lorry and awarded compensation of Rs.73,000/- with interest at 7.5% per annum from the date of petition till realisation. In O.P.No.734 of 2005, the Tribunal, on consideration of the evidence of PWs.1 and 2, and RW1, and the documents Exs.A1 to A5, and Ex.B1 and B2, awarded compensation of Rs.41,000/- with interest at 7.5% per annum from the date of petition till realisation. In O.P.No.733 of 2005, the Tribunal, on consideration of the evidence of PWs.1 and 2, and RW1, and the documents Exs.A1 to A13, and Ex.B1 and B2, awarded compensation of Rs.58,000/- with interest at 7.5% per annum from the date of petition till realisation. The compensation in all the three petitions were awarded against respondent No.1-owner of the crime lorry and the petitions against the 2nd respondent-insurance company were dismissed.

7. Aggrieved by the awards passed by the Tribunal, the petitioners-claimants have preferred these appeals mainly on two grounds; firstly, the quantum of compensation is inadequate, and secondly, the exoneration of the liability of 2nd respondent-insurance company is not in accordance with law.

8. Heard the arguments of the learned counsel for the respondents. No arguments were advanced on behalf of the appellants though sufficient opportunity was given. This is a matter pertaining to the year 2012 and is coming under the caption “For Dismissal”.

9. The points arise for consideration are as follows:

(i) Whether the appellants are entitled for enhancement of compensation?

(ii) Whether the findings of the Tribunal exonerating the liability of the 2nd respondent-insurance company are liable to be set aside?

10. Learned counsel for the 2nd respondent-insurance company submitted that the Tribunal has exonerated the liability of the insurer as the appellants travelled as passengers in a goods vehicle and therefore their liability is not covered under the insurance policy. Ex.B1 insurance policy does not cover the risk of the passengers travelling in a goods vehicle. He further submitted that the trial Court has observed that there is no positive evidence to prove that the petitioners were travelling in the mini goods vehicle as Hamalis or employees of respondent No.1 or as owner of goods and therefore the trial Court came to the conclusion that there is no coverage of insurance for the petitioners. Therefore, the findings of the Tribunal do not require any interference.

11. On consideration of the arguments of the learned counsel fro the respondent that the Tribunal has passed a well reasoned order coming to the conclusion that the petitioners have not produced any evidence to show that they were travelling in the mini goods lorry as hamalis or employees of respondent No.1 or as owner of goods, the insurance company is not liable to pay any compensation as there is no coverage of insurance for the petitioners. Therefore, in that view of the matter, the findings of the Tribunal do not require any interference.

12. It is appropriate to refer to the findings of the Tribunal in paragraph 23 of the judgment in O.P.No.733 of 2005, which is as under:

> **"23. Admittedly the owner of the lorry mini goods lorry obtained a policy for goods carrying (other than 3WH) public carriers liability policy only. On perusal of ex.B1 policy reveals that the first respondent paid Rs.3,280/- towards T.P. basic, Rs.100/- towards compulsory TA to owner/driver and Rs.200/- towards WC to employees (i). Ex.B1 insurance policy does not reveal that the first respondent/owner of the vehicle paid any premium covering the risk of the owner of goods or its representative. Further in Ex.B1 there is no whisper regarding transportation of owner of goods. In view of the principles laid down in the Judgment relied upon by the counsel for the R2/Insurance company reported in LC 2006 (7) SC 317 and also in view of principles laid down in the judgment, 2005 ACJ 721, it can be held that the policy under Ex.B1 does not cover the risk of the passenger either carrying goods or travelling gratuitously. As stated supra there is no any positive evidence to prove that the petitioner was travelling in the mini goods lorry as hamali employee of the R1 or owner of goods. Thus the stand of the petitioner is totally inconsistent because in the petition it is stated that he is carrying the turmeric and other agriculture produce and when he was examined as PW1 he changed his version and stated that he was travelling in the lorry on instructions of R1 and doing Hamali work onlorry. In view of the inconsistent version of the petitioner, it cannot be said that he was travelling in the lorry as Hamali of R1 and said story was invented during the course of enquiry after a gap of five years from the date of institution of claim petition. Thus the**

> **R2/insurance company cannot be fastened with any liability to pay the compensation as the policy under Ex.B1 does not cover the claim of the petitioner. Hence the R1 owner of the mini goods lorry is only liable to pay the compensation to the petitioner and accordingly the issue is answered in favour of the petitioner."**

13. In view of the findings of the Tribunal, I do not see any valid grounds to interfere with the impugned orders for considering the aspect of exonerating the liability of the 2nd respondent-insurance company. Therefore, there are no valid grounds to interfere with the findings of the Tribunal in this regard.

14. With regard to the quantum of compensation, the Tribunal, on consideration of the oral and documentary evidence, has awarded compensation adequately in all the petitions, and the same does not require any interference. The appeals are devoid of merit and are liable to be dismissed.

15. IN THE RESULT, the appeals are dismissed. No order as to costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

GUDISEVA SHYAM PRASAD, J

15th September, 2017

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