

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 2192 OF 2005

JUDGMENT:

1. This appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the Oriental Insurance Company Limited, represented by its Manager, Vijayawada, who is respondent No.3 in M.V.O.P. No.450 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Kakinada, East Godavari District (for short, 'the Tribunal'), aggrieved by the order dated 01.07.2005, whereby the Tribunal awarded an amount of Rs.1,09,095/-, as against Rs.1,50,000/- claimed by respondent No.1 herein for the injuries sustained by him in a motor accident occurred on 21.06.2002.

2. Appellant herein is the insurer, respondent No.1 herein is the petitioner-claimant and respondent Nos.2 and 3 herein are the driver and owner of the lorry bearing No.AP 16X 4171 (for short, 'the crime vehicle').

3. Heard the learned Standing Counsel for the appellant-insurer, learned counsel for respondent No.1-claimant, and perused the record. There is no representation for respondent Nos.2 and 3, driver and owner of the crime vehicle.

4. For convenience of reference, the parties hereinafter are referred to as arrayed before the Tribunal.

5. The averments of the petition, in brief, are that the petitioner was working as cleaner on a lorry bearing No.AP 16T 2502 and earning Rs.3,000/- per month as salary. On 21.06.2002, after completing transportation of gravel in the lorry at Dharmavaram main road, while he

was returning to his house in another lorry bearing No.AP 16X 4171 and when they reached Sathemma Talli temple at Dharmavaram, he requested the driver of the said lorry to stop the same and when he was getting down from the stationed lorry, respondent No.1-driver of the lorry moved the lorry negligently, without observing whether the petitioner got down from the lorry, and drove the lorry negligently at high speed, as a result of which, the petitioner slipped from the lorry and the lorry ran over his left hand. Due to which, his left hand was totally crushed up to the elbow and he also sustained grievous injuries and thereafter he was shifted to Government General Hospital, Prathipadu, later he was shifted to Government General Hospital, Kakinada. He had spent about Rs.20,000/- towards medical expenses and took treatment in the hospital for a period of two months. Therefore, he claimed compensation of Rs.1,50,000/- for the injuries sustained by him.

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

7. Respondent No.3-insurer filed counter denying all the averments made in the petition and contended that the accident occurred only due to the contributory negligence to the extent of 100% on the part of the petitioner, since he jumped out of the moving lorry, in which he was travelling as an unauthorised passenger. Therefore, the insurer is not liable to pay any compensation to the petitioner.

8. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2, R.W.1 and the documents Exs.A.1 to A.6, Ex.X.1 and Ex.B.1, granted compensation of Rs.1,09,095/- in favour of the petitioner

against respondent Nos.1 to 3, who are the driver, owner and insurer of the crime vehicle, *vide* order dated 01.07.2005. Challenging the said order, the appellant-insurer preferred the present appeal.

9. Learned standing counsel for the appellant-insurer would submit that the petitioner was not the cleaner of the crime vehicle; after completion of his work on another lorry, he was returning to his house by Lorry bearing No.AP 16X 4171, there is no policy of insurance covering the risk of the petitioner, who is a gratuitous passenger; the Tribunal ought not have directed the appellant-insurer to pay compensation jointly and severally along with respondents 1 and 2, being driver and owner of crime vehicle. The findings of the Tribunal are contrary to law and facts of the case; the compensation awarded by the Tribunal is excessive and ultimately prayed to allow the appeal by dismissing the claim against the appellant-insurer.

10. On the other hand, learned counsel for the 1st respondent-petitioner would contend that the Tribunal passed the order basing on the evidence on record. As the petitioner is working under the same contractor, he is entitled to return to his house by another lorry *i.e.*, AP16X 4171, hired by the same contractor, and there is no infirmity in the order. The Tribunal had granted just and reasonable compensation against the respondents directing them to jointly and severally pay the same with interest at the rate of 9% p.a. from the date of petition till the date of realization and ultimately prayed for dismissal of the appeal by confirming the impugned order.

11. In view of the rival submissions, the points that arise for determination are:

1) Whether the compensation granted by the Tribunal is excessive?

2) Whether the appellant-insurer is liable to pay compensation to the petitioner, as decided by the Tribunal in the impugned order?

12. **POINT No.1:** There is no dispute with regard to the petitioner suffering crush injuries to his left hand and taking treatment for the injuries sustained by him. To prove the case, the petitioner himself was examined as P.W.1 and got examined P.W.2, Dr. Y.Venkateswara Rao, got marked Exs.A-1 to A-6, X-1 on his behalf. Ex.A-1 is the attested copy of F.I.R, Ex.A-2 is the attested copy of wound certificate, Ex.A-3 is the attested copy of charge sheet, Ex.A-4 is the disability certificate, Ex.A-5 is photos with negatives, Ex.A-6 is medical bills and Ex.X-1 is the medical record of the petitioner. On behalf of the appellant-insurer, its employee R.W.1 was examined and Ex.B-1 copy of insurance policy was marked.

13. There is evidence of P.Ws.1 and 2 and the medical record to prove that the petitioner suffered crush injury on left fore-arm, left wrist and left hand, fracture of radius (left), fracture of 5th metacarpal and 1st phalanx of little finger and nails were inserted to treat those injuries. As per the evidence of P.W.2, doctor, the petitioner suffered permanent disability to an extent of 35%. As per the photos marked as Ex.A-5, left hand of the petitioner from elbow to fingers was completely damaged. The petitioner, who was aged 20 years at the time of accident, would have suffered considerable pain for the injuries sustained by him. Considering all the above aspects, the Tribunal granted an amount of Rs.50,000/- towards

mental agony, pain and suffering, Rs.6,750/- towards loss of earnings, Rs.12,345/- towards medical expenses, extra nourishment and transportation expenses and Rs.40,000/- towards 35% permanent disability suffered by the petitioner; in all granted a compensation of Rs.1,09,095/-. This finding is based on record, there is nothing to take a different view and the same is liable to be confirmed.

14. **POINT No.2:** There is no dispute that the petitioner suffered crush injuries due to the rash and negligent driving of the driver of crime vehicle. As per the evidence on record, after completion of transportation of gravel work by Lorry bearing No.AP 16T 2502, the petitioner boarded the crime vehicle *i.e., lorry* bearing No.AP 16X 4171 to reach his house, and when he was trying to get down from the said lorry, the driver of the lorry drove the same suddenly, as a result of which the petitioner fell down and the left hand of the petitioner went under the front wheel of the lorry, due to which he suffered the aforementioned injuries. From the oral as well as documentary evidence available on record, it is clear that the petitioner suffered injuries due to the rash and negligent driving of the driver of lorry bearing No.AP 16X 4171. As per the evidence on record, the petitioner was not the cleaner of the crime vehicle; he was only a gratuitous passenger.

15. In view of the principles laid down by the Apex Court in ***M/s. National Insurance Company Limited Vs. Baljith Kaur and others***¹ and ***National Insurance Company Limited Vs. Kaushalya Devi and others***², a gratuitous passenger travelling in a goods vehicle is not entitled to claim

¹ MANU SC 009 2004

² 2008 ACJ 2144

compensation from the insurer, even though there is valid insurance as on the date of occurrence of the accident. Admittedly, respondents 1 and 2, being driver and owner of the crime vehicle, have violated the terms and conditions of the policy. The Tribunal erred in holding that the appellant-insurer along with other respondents is jointly and severally liable to pay compensation to the petitioner. This finding is not based on the terms of Ex.B-1 policy of insurance and the same is set-aside. Accordingly, respondents 1 and 2, being driver and owner of the crime vehicle, alone are jointly and severally liable to pay compensation of Rs.1,09,095/- to the petitioner. However the rate of interest awarded by the Tribunal at the rate of 9% p.a. is on higher side and in view of the principle laid down by the Apex Court in ***Rajesh and others Vs. Rajbir Singh and others***³, the same is reduced to 7.5% p.a. from the date of filing of petition till the date of realization. The claim against the appellant-insurer is dismissed. The respondents 1 and 2 are directed to deposit the compensation amount within one month from today. On such deposit, the petitioner is permitted to withdraw the entire compensation. The other conditions imposed by the Tribunal remain unchanged.

16. Accordingly, with the above modifications, the Appeal is allowed in part.

17. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 24.10.2017
SIVA/DSH

³ 2013 ACJ 1403

HON'BLE Dr. JUSTICE SHAMEEM AKTHER**05****24102017****M.A.C.M.A. No. 2192 OF 2005****Date. 24.10.2017****DSH**