

THE HON'BLE MR JUSTICE N.BALAYOGI

M.A.C.M.A. No.2054 of 2009

JUDGMENT:

The appellant/3rd respondent/insurer aggrieved by the Award and Decree dated 9.8.2007 in M.V.O.P. No.710 of 2004 on the file of the Court of the Motor Vehicles Accident Claims Tribunal-cum-VII Additional District and Sessions Judge (Fast Track Court) at Vijayawada, preferred this appeal and contended that the Tribunal erred in ordering pay and recovery, particularly when the 1st respondent/claimant was traveling as unauthorized passenger and ought to have dismissed the claim. The reasons assigned by the Tribunal are unsound and baseless.

The claim of the 1st respondent/claimant in brief is as follows :

On 26.2.2004, while the claimant was traveling in the crime tractor bearing No.AP 07 G 2540 along with two others and when they reached near Leyland Company of Enikepadu Village on NH 5 road, the 1st respondent/driver in O.P. drove the crime vehicle in a rash and negligent manner and hit one lorry bearing No.AP 37 U 7717 which came in opposite direction and as a result, the claimant sustained injuries.

The claimant was inpatient in the Hospital for 20 days and spent nearly Rs.65,000/- towards medical expenses and subsequently also got treatment as outpatient.

The contention of 3rd respondent in O.P. was that the 1st respondent/driver has no valid and effective driving licence. The accident, if any, is due to the negligence of the lorry, hence the petition filed non-joining the owner and insurer of the said lorry is bad for non-joinder of necessary parties.

The 3rd respondent contended that as per the policy, the owner of the crime vehicle is permitted to travel with one person in the tractor, but the 2nd respondent/owner unauthorizedly allowed three persons/coolies to travel in his tractor, hence, the 3rd respondent is not liable to pay any compensation.

The Tribunal, having considered the pleadings, settled the following issues for trial :

- (i) Whether the petitioner sustained injuries in a Motor Vehicle Accident on 26.2.2004 due to the rash and negligent driving of 1st respondent, driver of lorry bearing No.AP 07G 2540 as claimed?
- (ii) Whether the petitioner is entitled to the compensation as prayed for? If so, from whom?
- (iii) To what relief?

Before the Tribunal, on behalf of the claimant, the claimant was examined as P.W.1 and Exs.A1 to A7 were marked. On behalf of respondents, R.W.1 was examined and Exs.B1 to B5 were marked.

The claimant himself was examined as P.W.1. His evidence is that on 26.2.2004 while he was travelling in the tractor bearing No.AP 07G 2540 along with two others, the driver drove the tractor with rash and negligent manner and hit the lorry bearing No.AP 37 U 7717, which came in opposite direction and as a result, the inmates of the

tractor fell down on the road. P.W.1 sustained injuries. Ex.A1 is the copy of the F.I.R. wherein there is a clear assertion that the driver of the tractor drove the vehicle with high speed in a rash and negligent manner. Ex.A5 is the charge-sheet, which is filed against the 1st respondent/driver after thorough investigation.

The respondents 1 and 2, who are driver and owner, were set *ex parte*. The 3rd respondent did not adduce any contra evidence to the evidence of P.W.1. In the absence of any such rebuttal evidence, the tribunal, having considered the evidence of P.W.1 and documentary evidence of Ex.A4 and A5, came to the conclusion that the accident was due to the rash and negligent driving of the driver of the Tractor bearing No.AP 07G 2540 in which P.W.1 sustained injuries as per Ex.A4 – wound certificate. The Tribunal further finds that no one regarding Exs.A4 and A7 are examined and it is not possible to assess the intensity of the injuries. Even though Ex.A7 – Medical Bills are not believed, in view of injuries mentioned in Ex.A4, the Tribunal allowed Rs.5,000/- towards medical expenses and Rs.20,000/- towards pain and suffering.

The further contention of the appellant is that P.W.1 is an unauthorized passenger on the tractor at the time of accident. The Tribunal, having considered the evidence of P.W.1 and also Exs.B1 to B5, came to the conclusion that Ex.B2 – Form-24B Register of the Tractor bearing No.AP 07G 2540, Ex.B3 – Form 24-B Register of Trailer bearing No.AP 07G 2541 and Ex.B4 – Return endorsement of

RTA and Ex.B5 – permit issued to the tractor and trailer, came to the conclusion that the crime tractor is not a passenger vehicle and it is a goods vehicle. Since the tractor and trailer are registered as commercial vehicle, it cannot carry passengers. Ex.A3 – Policy does not disclose that it covers the risk of workers in the tractor. Since Ex.A3 – Policy does not cover the risk of the workers or coolies and as no premium was filed and got it endorsed, the Tribunal is right in holding that there is no insurance for covering the workers or coolies in the tractor and trailer and the insurance company is not liable to pay the compensation.

In the light of evidence of P.W.1 and Exs.A1 to A7 and Exs.B1 to B5, the Tribunal came to the ultimate conclusion that the petitioner – P.W.1 is an unauthorized passenger, hence no liability under Ex.A3 can be fastened to the appellant – 3rd respondent. Therefore, respondents 1 and 2, who are driver and owner of the tractor and trailer are jointly and severally liable to pay. The Tribunal, having considered that P.W.1 is a coolie and as Ex.A3 – Policy is issued by the 3rd respondent to the tractor and trailer and the Motor Vehicles Act is a beneficial legislation, rightly ordered directing the 3rd respondent/Insurer to pay the compensation and recover the same from the respondents 1 and 2, who are driver and owner.

In view of the above findings and discussions therein, I am of the considered view that the Tribunal, having considered the oral and documentary evidence on record, came to the right conclusions that the

claimant is an unauthorized passenger in the tractor and Ex.A3 – Policy does not cover the risk and therefore the respondents 1 and 2 are jointly and severally liable to pay the compensation and absolved the liability of the 3rd respondent/insurer, however, taking into consideration that the Motor Vehicles Act is a beneficial legislation and the claimant is a coolie/worker, rightly ordered pay and recovery.

The Award and Decree dated 9.8.2007 in M.V.O.P. No.710 of 2004 on the file of the Court of the Motor Vehicles Accident Claims Tribunal-cum-VII Additional District and Sessions Judge (Fast Track Court) at Vijayawada, are legal, valid and do not suffer from legal infirmities warranting interference.

In the result, the Appeal is dismissed with costs. If the compensation amount is not already deposited, the appellant/3rd respondent/insurer is directed to deposit the compensation amount as awarded by the Tribunal, including interest and costs, duly giving credit to the amount, if any already deposited, within one month from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same without furnishing any security.

Advocate Fee is fixed at Rs.2,000/-.

JUSTICE N.BALAYOGI

22nd September, 2017

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